

Tagore Law Lectures, 1905.

The Mimamsa Rules of Interpretation as applied to Hindu Law.

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THE PREFACE.

The following lectures deal with "Rules of interpretation in Hindu Law" and that with special reference to Mimansa Aphorisms," that being the subject on which I was bound to deliver these lectures. The rules of interpretation found in the Hindu Law occur in Hindu Law-books either incidentally in connection with the treatment of the substantive law on the lines adopted by particular writers or purport expressly to be the reproduction of some one or other of the Mimansa principles of interpretation. The former class of rules mostly bear on isolated points and are not of much general interest and utility. So naturally I had to address myself more to the Mimansa Principles of Interpretation which form a systematic code of rules on the subject of interpretation. In fact, I was directed by the University to deal with my subject with a special reference to the Mimansa aphorisms. Those aphorisms however came into existence at a time and under circumstances which make it a difficult task to modernise their effect and purpose. I have tried to fulfil this task in the best manner I could. It might be supposed that such able and great commentators on the Aphorisms as Savaraswami and Kumarila Bhatta had made my task easier. But unfortunately that was not the case. As these commentators addressed themselves more to the religious and metaphysical questions arising out of the subject which Jaimini was interpreting than the principles and rules of interpretation which he was following, though the commentators certainly did not altogether neglect the latter. However commentators of

PREFACE.

comparatively more recent dates, such as Laugakshi Bhaskar and Apadeva have been greatly useful in modernising the ancient texts. In getting the lectures through the press I have got valuable assistance from Babu Charu Chandra Bhattacharya M. A. B. L. and I take this opportunity of thanking him for his troubles.

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Dated 20th June, 1909.

} KISHORI LAL SARKAR.

CONTENTS.

THE INTRODUCTORY LECTURE.

Section I. Remarks on the subject of Interpretation generally:—

Position and importance of the rules of Interpretation—modern treatment of the subject—treatment by Maxwell—the two cardinal questions—four principles deduced—four counterparts of the Mimansa shastra—necessity of illustrative cases—axioms—presumption against superfluity—Anarthakya—presumption against contradiction—Vikalpa.

Section II. Introductory remarks on the Mimansa system of Interpretation:—

Sir J. Edge's observations—Mr. Colebrooke on Mimansa—Pro. Maxmuller on Mimansa—Dr. Thibaut on Mimansa—peculiar importance of the fixed rules of interpretation as regards the Hindu law—history of the Hindu law, first stage—difference between Sruti and Smriti—administration of Justice in this period—second stage—administration of Justice in the second period—third stage that of codification—administration of Justice in this period—state courts—popular courts—knowledge of Mimansa a necessary qualification of assessors—fourth stage, Buddhistic period—the impress of Buddhism in Mitakshara—Agnipurana evidences development of the Buddhistic period—fifth stage, the Mahomedan period—the Pathan feudal system—the administration of Hindu law in the Pathan times—the Mogul system of administration—the Mimansa rules not a dead letter—Vedic origin of the Hindu system of Interpretation—an incidental observation regarding Jaimini's age—nature and purpose of the Sutras—Sruti law and Smriti law—Hermeneutic and Mimansa compared—application of

Mimansa rules to civil law not strained—Modern definition and Jaimini's definition of law—modern idea and Jaimini's idea of sanction—Mr. Colebrooke on sanction—Dharma and Adharma—Jaimini's classification of Vedic texts—the difference between Vidhi and Arthavada—Namadheya—difference between Arthavada and Namadheya—definition of Vidhi—Namadheya discussed—Jaimini's classification of Vidhi (1) according to the degree of obligatory force—Vidhi, Niyama and Parisankhya—Vedic and modern ideas on the subject discussed—(2) according to the purpose—Utpatti Vidhis—Karma in relation to primary command—Vinivoga Vidhis, Proyaga Vidhis &c, are accessories to Utpatti Vidhis which again are accessories to Pradhana Chodana—Vinivoga Vidhis and Prayoga Vidhis explained—Adhicara Vidhis—scope of the Vedic Vidhis, they include visible and worldly matters—further division into Purushartha and Kratwartha Vidhis—Arthakarma and Pratipattikarma—Nitya and Naimittika—evolution of Sruti law from the Vedic law—Anarabhyadhita Vidhi—Pratishedha and Paryudasa—Vikalpa—Pratyakshya and Kalpya—Shabdibhavana and Arthibhavana.—

Section III.—Application of Mimansa Rules to the Positive Smṛiti law :—

Commentators' discussion more theological than Judicial—nature of these discussions illustrated—distinguished Hindu lawyers' Judicial application of Mimansa—Vijnaneswara—Jimutavahana—Nilakantha—Medhatithi—Kulluka—Raghunandana—Apastamba—Baudhayana &c—the process of Adhikarana—Adhikarana identical with Nyaya—Mimansa Nyayas superior to those of grammar and logic—

Section IV. A brief Analysis of the Mimansa principles of Interpretation :—

A brief analysis of the subject—germs of Mimansa in the—Vedas—Mimansa principles in Dharma Sutras—principles of Interpretation in Smṛiti—classification of Mimansa rules of interpretation—(class I) axioms of interpretation—Sarthakyata—Laghava—

Arthaikatva—Gunapradhana—Samanjasya—Vikalpa—(class II) general principles of Interpretation Sruti—Linga—Vakya—Prakaran—importance of the Sruti principle—their relative force—Sthana and Samakhya—(class III) general principles of the applications of texts—(class IV) specific rules called Nyayas—(class V) general rules regarding Smriti texts and usages—plan of the lectures to be delivered : p.p. 1—76.

LECTURE II.

The general principles of Mimansa Interpretation. Section I. The elementary principles or the axioms of interpretation :—

Axioms of interpretation—first axiom discussed—second axiom discussed—Gaurava, explanation from Nyayamalavistara—Gaurava, explanation from Dayabhaga—third axiom discussed—illustration from Dayabhaga—Vakyabheda from ambiguity of words—the conception of Vakyabheda explained—fourth axiom discussed—Uha and Badha illustrations of this axiom—the axiom holds good equally with the Vyavahara law—fifth axiom discussed—reconciliation by the Arthavada principle—reconciliation by referring to different subject matters—sixth axiom discussed—

Section II. The four general principles broadly explained :—

Sruti principle—Sruti, Linga, Vakya and Prakaran in relation to each other—Mr. Kunte's comparative explanation of Sruti, Linga &c.—Laugakshi Bhashkara's explanation—Apadevas' explanation—Kumarila Bhatta's explanation—Bhatta's discrimination between Sruti and Linga—Bhatta's discrimination between Vakya on the one hand and Sruti and Linga on the other—Bhatta's discrimination between Vakya and Prakarana—Savara Swami's views on Sruti, Linga and Vakya—Udichya Bhattacharya—classification with reference to matter and manner—

Section III. Each of the four principles separately dealt with :—

Sruti principle—Sruti serves to explain other passages—expressions Sruti, Linga &c., replaced by other expressions—Linga principle—modern ideas corresponding to the idea of Linga—double meaning of the word Linga—Apadeva's larger view of Linga—Bhatta's analysis of Linga and Lingi—Barhi maxim an illustration of Linga principle—Laugakshi's explanation of Barhi maxim—Maxwell on the technical meaning of words—Pranabhrit maxim—Linga corresponds to Lakshana Artha—eternity of the Vedas by Linga principle—construction by Linga, Vakya &c. resorted to by Digest writers—Vijnaneswara and Jimutavahana—Vakya principle—Vakya defined and explained—Vakya principle discussed in detail with illustration—Vakya includes Adhyahara and Anusanga &c.—illustrations from Slokavartika—modern writers use Anvaya instead of Vakya—Prakarana principle—Laugakshi Bhashkara's explanation of Prakarana with illustrations—Upalakshana is another name for Prakarana—distinction between Prakarana and Guna sruti—Sthana Principle defined and explained. Its identity with Krama—the importance of Krama in Vedic ceremonies and in certain case of succession of heirs—Samakhya principle—Samakhya another case of Prakarana—

Section IV. The relative force of Sruti, Linga, Vakya &c :—The relative force of the several principles—the Mimamsa principles of construction are according to English writers' construction by contest—the distinction between Linga and Vakya—Sruti distinguished from Linga, Vakya and Prakarana—superiority of Sruti over Linga and Vakya and of Linga over Vakya—superiority of Vakya over Prakarana—illustration from Jimutavahana showing the superiority of Sruti—illustration from Jimutavahana showing the superiority of Linga to Vakya—

Pramanas	pp. 77—168.
----------	-----	---	-----	-----	-----	-------------

LECTURE III.

General Mimansa Principles regarding the application of texts.

Section I. Which texts are obligatory and which are not obligatory as also which are only partially obligatory :—

Distinction between interpretation and application of texts—the three kinds of texts—defined, discussed and illustrated—the importance of object and reason, Pradhana chodana—non-obligatory text, Arthavada—Vidhibannigadadhikarana—Hetubōnnigadadhikarana—non-obligatory texts, Namadheyas—disagreement as to the interpretation of Shyena text between Savara Swami and Kumarila Bhatta and others—distinction between Vidhi and Niyama in their application to transcendental object—Niyama is only a directory rule—distinction between Kratudharma and Purushadharma—several illustrations of Purushadharma—Arthakarma and Pratipattikarma—Manushyadharma and Arthavadas—Manushyadharma and Kratudharma.

Section II. The remaining principles of application :—

The distribution of topics as made by Jaimini—Adhikara Vidhis—The germ of the principle of exclusion from inheritance contained in the Jaimini Sutras—competency of women to perform Vedic ceremonies in ancient times—matters treated under Adhikara Vidhis—status of women and sudras—general explanation of Krama Vidhis—the three chief Kramas—the bearing of Krama upon Vyavahara law—Atidesha, Uha and Badha—the necessity of Atidesha how arisen—Jaimini's treatment of Atidesha—Savara Swami's explanation of it—illustrations of Atidesha from Acharakanda—application of Atidesha to the case of the adopted son—similar application to the case of Hindu wills—Uha principle—scope of the term Uha—Uha in relation to Arthavada and Niyama—Vedic and Laukika Niyama—application of Uha to marriage and adoption—Uha-vichara corresponds to modern construction most agreeable to justice and reason—Artha

shastra—Badha principle—Badha as used by Jaimini—Badha, with regard to positive texts—with regard to negative texts—Sree Bhatta's two-fold division of it—Prapta Badha and Aprapta Badha—illustrations—reconciliation of conflicting texts by Badha—Savra Swami's dealing with conflicting texts—reconciliation of Smriti texts—Tantrata and Prasanga—Avapa— ... pp. 169-222.

LECTURE IV.

Mimansa rules specially regarding the Smritis and Usages :—

Section I. A succinct idea of the topic :—

Sruti and Smriti law—Case law and statute law—Jaimini's treatment of Smriti and usage law—Sutras relating to Mleccha language and usages—different construction of Padartha prabalya maxim by Kumarila and Savara—seven principles of construction of Smriti and usage law—Sutras relating to the first principle—Sutras relating to the second principle—Sutras relating to the third principle—Sutras relating to the fourth principle—Sutras relating to the fifth principle—Sutras relating to the sixth principle—Sutras relating to the seventh principle—correspondence of the seven rules with modern legal ideas—

Section II. Detailed consideration of the seven rules :—

Rule 1. Smriti presumed to be authoritative and binding—Vedic origin of Smriti—Rig Veda—law and religion blended together—Sir Henry Maine and the philosophers of the French revolution on civil law—Rule 2. In case of conflict between a Smriti text and a Vedic text, the latter should prevail—Oudum vari Nyaya, an illustration of conflict—conflict between Smriti and Purana—Rule 3. The authority of the Smriti is vitiated if it is based on a perverse motive—Sutra speaks of motive only—Mandlik's wide view of it—Savara and commentators do not take such wide view—Visarjana homa—validity of the text is questioned in case of selfish motive—Kumarila's view—

Apastamba—Siromani—Darvi homa—reason does not invalidate the Vidhi—Padarttha Prabalya—Savara Swami's view of the Sutras—Kumarila's view of the Sutras different from that of Savara—Rameswara Suri explains the difference—Kumarila's view of the 7th Sutra—it establishes the validity of usage—conscious-satisfaction is not the only test of validity of usage—usage is valid if recommended somewhere—non-condemnation by the wise gives validity to usage—Colebrooke on the Adhikarana—what is condemnation by the Sruti or Smriti—doctrines of Factum valet and vox populi—Rule 5.—matters sanctioned by the Shastras should have preference—verbal usages—conflict between two usages—Rule 7. Usage or Smriti must be reduced to the short, simple and general form of a Vedic Vidhi—Holaka maxim—Sutras relating to the maxim—conclusion—the Vidhi is general though custom is local—the Holaka maxim relates to religious ceremonies—Mimansakas recognise local or tribal customs in case of worldly matters but not in case of religious matters—Jaimini speaks of only approved usages but Manu enumerates all sorts of usages—the Brahma marriage prevails and the others mostly disappeared—very little foreign influence at the time of Savara—Kumarila condemns foreign usage—foreign usages when valid—two other Adhikaranas—preference of Sanskrit words in interpreting popular sayings—the words to be understood in their general sense—Akriti and Vyakti—three striking points. ... pp. 223-266.

LECTURE V.

The Mimansa Nyayas or the specific principles of Mimansa called Nyayas (Maxims).

Section I. Introduction to the topic :—

Nyayas resemble headnotes—Maxmuller's analysis of a Nyaya—knowledge of general principles is indispensable—Leading

word or phrase in a text to be found out in cases of Sruti and Lingas—what are the leading words—four classes of Nyayas—

Section II. Maxims relating to the interpretation of words :—

Three subdivisions of Class I.—Class I. Group A.—usage sense—popular meaning—Sruti sense—Foreign words in their foreign sense—same term in modern and ancient texts—Class I. Group B.—Wooden sword maxim—Aruni Maxim—Shastric usage of the words—when the word is used in a qualified sense—when in a technical sense—same word must not have several senses—general word meaning an individual object—symbolical meaning in preference to natural meaning—one object of a class gives name to the whole class—figurative sense—sense of a vague word to be gathered from what follows—Class I. Group C.—singular number includes plural—single animal maxim—Habis maxim—Partridge maxim—Explanatory observations on the foregoing maxims—.

Section III. Maxims bearing on the construction of sentences and texts :—

Four subdivisions of Class II.—Class II. Group A—strict construction—preference of literal construction—intelligible sense meaning—text having doubtful point—low caste priest maxim—subordinates merge in the principal—Arthavada maxim—.

Class II. Group B.—Maxim of implied Vidhis—pillar maxim—Nivita maxim—individual virtue maxim—mutually unconnected clause maxim—mutually connected clause maxim—closing the fist maxim—Suktavaka maxim—the principal and subordinate maxim—maxim of the incidental—stepping forward maxim—whey maxim—

Class II. Group C.—Complex sentence maxim—disintegration of sentences maxim—Ellipsis maxim—take it forward maxim—take it backward maxim—sacred thread maxim—Maitravaruna maxim—.

Class II. Group D.—Blackbean maxim—Burnt offering maxim—chip of wood maxim—Kaimutika maxim—.

Class II. Group E.—prohibition of speaking untruth—three-debts maxim—Chitra maxim—simile maxim—explanatory observations on the foregoing maxims... pp. 267—311

LECTURE VI.

Maxims relating to negative rules and cases of conflict and also of certain miscellaneous maxims—Section I. Maxims regarding negative rules and conflict of texts :—

Preliminary discussion on the subject—Four divisions of the negative rules and conflict of texts—Groups A. B. C. D.—.

Class III. Group A.—Four maxims regarding Pratishedha—

Class III. Group B.—Four maxims regarding Paryudasa—.

Class III. Group C.—two maxims regarding alternative clauses &c.

Class III. Group D.—three maxims regarding the application of Smṛiti texts—detailed considerations of maxims of Group A.—Kalanja maxim—as explained by Laugakshi Bhashkara—Shorasi maxim explained—Dvayo pranayanti maxim explained—Explanations and considerations of details of maxims of Group B.—explanatory observations on Paryudasa—explanations and considerations of details of maxims of Group C.—explanatory observations on losing hold maxim—maxim of the general and particular explained—explanations and considerations of details of rules of Group D—explanatory observations on the Smṛiti maxims—.

Section II. Miscellaneous Maxims :—

Class IV. Group A.—maxims regarding competency—

Class IV. Group B.—maxims regarding conditions to be observed by the performers—.

Class IV. Group C.—maxims regarding the ownership of property—five principles regarding property ... pp. 313—349

LECTURE VII.

Certain principles of interpretation of common knowledge or the popular maxims—

Preliminary observations on the binding force of the popular maxims—

Section I. Popular maxims with legal significance—

Maxims with legal significance—maxims expressing wit or sarcasm—principles of interpretation other than maxims—

Section II. Explanatory observations on the foregoing maxims—

Mimansa Pramanas—scope and meaning of popular maxims—maxims explained—three fixed rules of guidance for writing treatises—.

Section III. Some other popular maxims :—maxims described by Colonel Jacob— ... pp. 351—382

LECTURE VIII.

The Mimansa rules of interpretation as applied to and as applied by digest writers—the state of things before the digests—ancient and modern conception of property—general principles of law evolved gradually—.

Section I. Departure taken by Digest writers in different directions :—

Principles of succession and inheritance how developed—different views of Vijnaneswara and Jimutavahana regarding succession and inheritance—the principle of spiritual benefit and that of family corporation, as advocated by Jimutavahana and Vijnaneswara respectively—.

Section II. How the Mimansa principles are to be applied to the texts of the Digests :—different interpretation of Gautama Sutra by Jimutavahana and Vijnaneswara though both rely upon Mimansa Sutras—conception of property

according to Vijñaneswara and Jimutavahana—Jimuta's spiritual doctrine is in accordance with Manu—The doctrine of *factum valet*—another instance of divergence of opinion between Vijñaneswara and Jimutavahana—Dvayo pranayanti maxim in connection with widow's right to succeed to husband's property—Dvayo pranayanti maxim as explained by Jimutavahana—Nitya and Kāmya Vidhis—Jimutavahana's view as to father's power over ancestral and self-acquired property—*factum valet* doctrine—its misinterpretation by English Judges—nature of father's ownership over ancestral and self-acquired property—misinterpretation of *factum valet* doctrine violates the Linga, Vākya and Prakāraṇa principles—the law of wills and that of gifts—gift to non-existent beings is invalid is too general
pp. 383—415.

LECTURE IX.

Section I. Application of Mimāṃsa Principles by writers other than the founders of the two codes :—

Law of adoption as interpreted by Nīlkantha and Nanda Pundit—Nīlkantha on Sarvadakṣhiṇa maxim—the three maxims invoked by Nīlkantha to explain the subject of adoption—Nīlkantha refers to Maitravaruṇa maxim in construing the text of Saunaka—the text of Saunaka is not limited to Sudras—Sāṅkara Bhaṭṭa's dealing with three-debts maxim—Four maxims referred to in Dattakamimāṃsa in connection with adoption—Pranabhṛit maxim—Vaiśvadeva maxim—Jātesti maxim—Ishti Somya maxim—Amikṣha maxim—Kapijḡala Nyaya—Saunaka and Sakala's texts as regards the adoptibility of certain sons—necessity of Mimāṃsa rules in interpreting Smṛitis—all imperative texts are not Dharma or Vidhi—Utility of classification of texts into Vidhi and Arthavāda—principle of Linga how applied—Kāmya and Nitya Vidhi—application of Gṛahāikatva maxim to a certain passage—Raghunāṇḍana applying Vākya Principle

in construing a passage of Manu—Raghunandana's illustration of Apurva sanction with reference to Janmashtami ceremony—Raghunandana's vindication of animal sacrifice in Durgapuja—difference between Pratishedha and Paryudasa as illustrated by Raghunandana in his Malamasatattva—Laghava axiom—Atidesha principle—.

Section II. The utility of the presumptions of the substantive law in matters of interpretation :—

Principles underlying Smriti texts—Jaimini Sutras are not altogether silent of civil law—The three great presumptions of the substantive Smriti law—the maxim of the three-debts—the three presumptions relied upon by digest writers—the great influence of the three debts—the pervading influence of the family institution pp. 417—440.

LECTURE X.

Section I. Interpretation of Hindu law regarding adoption by the courts under the English rule :—

General remarks—rules laid down by the Collector of Madura *v.* Mootoo Ramalinga substantially correspond to Mimansa principles—cases showing where verbal construction has been resorted to—construction of the texts by their Lordships of the Privy Council is in accord with the Mimansa rules—Examination as to the application of Mimansa rules—The decision as to the validity of the adoption of an only son is not in accord with the Mimansa rules—construction of the texts of Vashishtha and Saunaka as to the adoption of an only son by the Mimansa rules—prohibition of the adoption of an only son is the result—adoption of mother's sister's son as well as that of daughter's and sister's son invalid—Sauhaka and Sakala on the invalidity of adoption of daughter's, sister's and mother's sister's son—.

Section II. Cases decided by the Courts under the English rule regarding the Hindu usage and custom :—

Customs in harmony with the Vedas prevail—decided cases harmonize with the Mimansa principles ... pp. 441—465.

LECTURE XI.

Resemblance or otherwise between the Hindu legal maxims and principles of interpretation and those of the modern European law—

Section I. General resemblance between western legal maxims and Hindu legal maxims :—

Maxims on public policy and legislative policy—maxims relating to the Crown—logical maxims—fundamental legal principles—maxims regarding transfer of property—maxims regarding the law of descent—maxims relating to law of contract—maxims relating to interpretation—.

Section II. Resemblance and difference between the general lines of interpretation followed by English authors and the Hindu authors :—

Mimansa rules of construction substantially agree with the modern English principles of construction—some other Mimansa maxims—illegality and irregularity—patent and latent ambiguity ... pp. 467-491.

LECTURE XII.

A summary of Hindu Jurisprudence and of Mimansa Philosophy and Literature :—

Part I. Hindu Jurisprudence :—

Threefold character of Hindu law—the law has sanction—the nature of ancient and modern sanction—Ecclesiastical courts, their functions—king's courts and Vyavahara law—meaning of Vyavahara—divine right of the king has no place in Hindu Shastra—

Vyavahara defined—Hindu Jurisprudence. Its identity with spiritual law—the point of difference between the spiritual and civil law—classification of Vidhi into Vidhi proper, Niyama and Parisankhya—like classification of spiritual Vidhi—Vyavaharic Niyama illustrated—Parisankhya—as enunciated by Raghu-nandana—Arthavada—

Part II. Mimansa Philosophy and Mimansa Literature:—

Mimansa philosophy—the conservative and rational school of Mimansa philosophy—Mimansa literature—Ballantyne's obser-vation on Sutra literature—the style of the Sutras—classification of Jaimini Sutras—age of Jaimini—Bhagawan Upavarsha—Savara Swami—Kumarila Bhatta—Prabhakara—Madhavacharya—Parthasarathi Misra—Khandadeva—Gaga Bhatta—Somanath—Raghavananda—Vedantadesika—Appya Dikshita—Bhattasan-kara—Narayanatirtha Muni—Rameswara Suri—Udichya Bhatta-charya—Laugakshi Bhashkara and Apadeva—Rangaraja—Ram Chandra— ... pp. 493-521.

LECTURE XIII.

A brief resume ... pp. 523-529.

THE INTRODUCTORY LECTURE.

Section I. Remarks on the subject of interpretation generally.

The subject of my course of lectures is, "Rules of *interpretation in Hindu Law*, and that with special reference to the *Mīmāṃsā* Aphorisms." It is expedient, however, to say a few words on the subject of interpretation of law generally, before taking up the limited branch of it with which I shall have to deal.

It is to be regretted that the subject of interpretation of law has not in modern times received that decree of attention which it deserves. The rules of interpretation may well rank as an important branch of what is called the adjective law. The part that these rules play in the administration of justice is by no means less important than the rules of procedure or the rules of evidence. Primarily the Courts have to deal with three things;— (1) Laws dealing with rights and liabilities, (2) Facts which establish such rights and liabilities in particular cases and (3) the machinery of administering the law and of ascertaining facts. Leaving the last matter apart, as being rather of an incidental character, the main duty of the Court is, to deal with the substantive law, with which they are supplied by the State, and with the facts, with which the parties propose to supply them. To assist them in respect of the latter duty, there is the law of Evidence. To assist them as regards the former

Position and importance of the Rules of interpretation.

duty, there are the rules of interpretation. Thus, the rules of interpretation stand side by side with the rules of evidence. Yet the former have scarcely received that degree of attention as the latter. Probably, it will be said that the Judges know to interpret the law without any hard and fast rules to guide them. If that is so, it may be said with almost equal reason that the Judges ought to know what evidence to receive and what to reject, without any set rules to govern them. No doubt, as a matter of fact, a well-trained Judge hits upon the proper interpretation of a passage of law, without thinking of any rules of interpretation, that may exist on the subject. Similarly, a man with common sense argues rightly without any knowledge of logic. No one, however, will say that logic is uncalled for, because many men reason rightly, without any consciousness of logic. No more can it be said that rules of interpretation are unnecessary, because good Judges interpret law properly, without thinking of any rules on the subject.

The truth is, if the subject of the rules of interpretation of law has been comparatively neglected, it is not because of a want of necessity for it, but because the necessity has been supplied loosely and empirically by what is known as precedents and rulings.

Modern
treatment of
the subject.

In England, books on interpretation of law deal with the interpretation of Statute Law. One of the earliest works of this kind was the work of Sir Fortunatus Dwaris, which was published about the middle of the nineteenth century. This work with that of the American Jurist Mr. Sedgwick, and the book written by Henry Hardcastle, were for sometime the leading works on the subject of interpretation. Mr. Wilberforce's work on the interpretation of statutes is a valuable addition to the

literature on the subject. But the work which is mostly resorted to at the present day as an authority on interpretation is that by Sir Peter Benson Maxwell, the 3rd edition of which is by Mr. A. B. Kempe.

From a perusal of this last work it will appear that much yet remains to reduce the subject to anything like a scientific shape. The following is the opening section of this book:

"A statute is the Will of the Legislature; and the fundamental rule of interpretation, to which all others are subordinate, is that a statute is to be expounded "according to the intent of them that made it." The object of all interpretation of it is to determine what intention is conveyed, either expressly or by implication, by the language used, so far as it is necessary for determining whether the particular case or state of facts presented to the interpreter falls within it. When the intention is expressed, the task is of verbal construction only; but when the statute expresses no intention on a question to which it gives rise, and yet some intention must necessarily be imputed to the Legislature regarding it, the interpreter has to determine it by inference grounded on certain legal principles. The Act, for instance, which imposes a penalty, recoverable summarily, on every tradesman, labourer and other person who carries on his worldly calling on a Sunday, would give rise to a question of the former kind, when it had to be determined whether the class of persons to which the accused belonged was comprised in the prohibition. But two other questions arise out of the prohibition: is the offender indictable as well as punishable summarily? And is the validity of a contract entered into in contravention of the Act, affected by it? On these corollaries

Treatment
by Maxwell.

or necessary inferences from its enactment, the Legislature, though silent, must nevertheless be held to have entertained some intention, and the interpreter is bound to determine what it was."

The two cardinal questions.

"The subject of the interpretation of a statute seems thus to fall under two general heads: what are the principles which govern the construction of the language of an Act of Parliament; and next, what are those which guide the interpreter in gathering the intention on those incidental points on which the Legislature is necessarily presumed to have entertained one, but on which it has not expressed any."

The two questions summed up as above may be as well put in the following language:

(1) What is the *meaning* and *intention* of a particular word, sentence or passage?

(2) Whether it constitutes an obligatory rule of any kind or a quasi-obligatory rule or a non-obligatory matter in cases where the intention and meaning is not sufficiently explicit on these points?

Mr. Maxwell first of all treats of what is called the Literal Construction. He broaches this topic as follows:

"The first and most elementary rule of Construction is, that it is to be assumed that the words and phrases are used in their technical meaning if they have acquired one, and in their popular meaning if they have not, and that the phrases and sentences are to be construed according to the rules of grammar; and from this presumption it is not allowable to depart where the language admits of no other meaning; nor where it is susceptible of another meaning, unless adequate grounds are found, either in the history or cause of the enactment or in the context or in the consequences which would result from the literal inter-

pretation, for concluding that that interpretation does not give the real intention of the Legislature.¹ If there is nothing to modify, nothing to alter, nothing to qualify the language which the statute contains, it must be construed in the ordinary and natural meaning of the words and sentences."²

You will find from the above :

First.—That the words and sentences of a statute must be construed in their natural and ordinary meaning, unless there be something to modify, to alter or qualify that meaning.

Four principles deduced.

Secondly.—That the natural and ordinary meaning is the popular meaning, unless the word or phrase has acquired a technical meaning well understood by those conversant with the subject.

Thirdly.—That phrases and sentences which require to be combined according to rules of grammar.

Fourthly.—That when adequate grounds are found, either in the history or cause of the enactment or in the context or in the consequences which would result from the literal construction, for concluding that the ordinary and natural meaning does not give the real intention of the Legislature, that meaning may be departed from.

¹ Bac. Ab Statute (I) 2; Grot. b. 2, c. 16, ss. 2, 3; Puff. L.N. b. 5, c. 12; Warburton v. Loveland, Huds. & Br. 648; Becke v. Smith, 2 M & W. 191; Everett v. Wells, 2 M & Gr. 269; R. v. Pease, 4 B. & Ad. 41; McDougal v. Paterson, 11 C. B. 755; Mallan v. May, 13 M. & W. 511; Mattison v. Hart, 14 C. B. 385; per maule J. in Jeffreys v. Boosey, 4 H. L. 815; per Lord Wensleydale in Grey v. Pearson, 6 H. L. 106, and Abbot v. Middleton, 7 H. L. 114; R. v. Millis, 10 C. L. & F. 749, per Lord Brougham; Attorney-Gen v. Westminster Chambers Assoc, 1 Ex. D. 476, per Jessel M. R.; Cull v. Austin, L. R. 7 C. P. 234; R. v. Castro, L. R. 9, Q. B. 360; Bradlaugh v. Clarke, 8 App. Cas. 384, per Lord Fitz Gerald Hornsey L. B. v. Monarch Bldg. Soc. 24 Q. B. D. 5, per Lord Esher M. R.; Travis v. Uttley, [1894] 1 Q. B. 233.

² St. John's, Hampstead v. Cotton, 12, App. Cas. 6, per Lord Halsbury L. C.

Four coun-
terparts of
the Mimāṃsā
Śāstra.

These four general rules have their counterparts in our ancient Sanskrit works on interpretation in what are called the (1) *principle of the Sruti*, (2) *that of Linga* (3) *that of Vākya* and (4) *that of Prakarana*.¹

(1) The principle of the Sruti is that, when a sentence is complete and explicit in sense and grammar, no attempt should be made to strain or twist its meaning.

(2) The principle of Linga is that, when a word or expression has more than one meaning, and the natural or ordinary meaning of a word or expression does not harmonize with the context or the subject, its technical sense is to be determined by the context or by reference to other parts of the subject.

(3) The principle of Vākya is that, where words and sentences are not connected in an explicit or clear manner, they should be joined grammatically, so as to make a sensible proposition.

(4) The principle of Prakarana is that, when a sentence or clause makes no complete sense by itself, however clear its meaning and grammatical composition may be, it should be read into or with some other passage with which it coalesces, according to the nature of the whole subject.

Thus, the general rules indicated by Maxwell more or less correspond to the general rules of the Mimāṃsā Śāstra. But, whether, you take them as treated in the old Sanskrit works or in modern Western works, you see that these general rules are hardly of much practical use. These rules assume that there is a sharp line of demarcation, between a case in which the literal principle (the Sruti principle) is to apply, and one in which one or other of the other principles is to apply. But as a mat-

¹ श्रुति लिङ्ग वाक्यनकारण Jaimini III. iii. 14.

ter of fact, it is very hard in doubtful cases to distinguish whether the circumstances of a passage justify the one or any other modes of construction. In fact, the general rules do not go much further than saying where the literal construction is applicable, apply it ; and where any other mode of construction is applicable, apply that. Therefore illustrative cases are necessary. If a tangible concrete case is given to show where the literal construction is legitimate and another such case is given to show where it is inapplicable, then one can effectively guide himself in the practice of interpretation. Hence, the useful part of an work on interpretation is that in which such illustrative cases are given. The Hindu system of interpretation deals with such illustrative cases. They are called Nyayas or Adhikaranas.

Necessity of
illustrative
cases.

English books on Construction of statutes also mostly deal with illustrative cases. For instance, in Maxwell you find that after enunciating the general rules stated above, he goes on to take up particular cases or particular classes of cases to show how far the literal principle should extend, and under what circumstances the principles of construction by context and by other considerations should be applied.

Again, there are certain presumptions of an elementary or axiomatic character affecting interpretation which have been recognized in ancient and modern times. The following is one of these.

Axioms.

It is to be presumed that a law-maker never used a word or sentence without purpose and meaning. Hence it is laid down that,

"A statute ought to be so construed, that if it can be prevented, no clause, sentence or word shall be superfluous, void or insignificant."

Presumption
against su-
perfluity.

Anarthakya.

Corresponding to this there is the Sanskrit maxim that construction should be, if possible, free from the defect called *Ānarthakya* (attributing meaninglessness).

Presumption
against con-
tradiction.

That contradictions should not be too easily assumed is another axiomatic principle of an universal character. English writers of interpretation proceed on this principle in insisting that construction should be so as to harmonize one provision with another. According to Sanskrit writers, if there be a direct and clear conflict between two texts, the effect is that the binding effect of both is neutralised, and that one is left to accept either at his option (*Vikalpa*). This being so, they maintain that it is a faulty construction to allow such a disastrous result, if there be any means left open to reconcile the texts.

Vikalpa.

You will now have some idea of the nature of the subject of interpretation of law in general. But interpretation in general is not the subject on which I am to lecture.

Section II. Introductory remarks on the *Mimāṃsā* system of interpretation

The subject on which I have to deliver the following lectures is, "the rules of interpretation in Hindu law with special reference to the *Mimāṃsā* Aphorisms as applied to Hindu Law." This subject cannot be better introduced than in the language of Sir John Edge, C. J., who with reference to a question of Hindu Law arising before him, observed as follows:—

Sir J. Edge's
observations.

"The question is how is the text of Vasistha to be construed. It must clearly be construed according to the rules for the construction of the texts of the sacred books of the Hindu Law, if authoritative rules on the subject exist. That rules for the construction of the

sacred texts and law of the Hindus do exist cannot be disputed, although those rules have been frequently overlooked or not referred to by Judges or English text writers, probably because they are in Sanskrit and have, so far as I am aware, not yet been translated. That they are rules of the highest authority is obvious from the manner in which they have been referred to by Mr. Colebrooke."¹

Mr. Colebrooke treats of the Mimāṃsā Aphorisms in one of his Miscellaneous Essays, Vol. I. The following short extract from this Essay will show the high importance he attaches to the Mimāṃsā Aphorisms as regards the interpretation of the Hindu Law:—

Mr. Colebrooke on Mimāṃsā.

"A case is proposed either specified in Jaimini's text or supplied by his scholiasts. Upon this a doubt or question is raised, and a solution of it is suggested, which is refuted and a right conclusion established in its stead. The disquisitions of the Mimāṃsā bear, therefore, a certain resemblance to judicial questions; and, in fact, the Hindu Law being blended with the religion of the people the same modes of reasoning are applicable, and are applied to the one as to the other. The logic of the Mimāṃsā is the logic of the law—the rule of interpretation of civil and religious ordinances. Each case is examined and determined upon general principles; and from the cases decided, the principles may be collected. A well ordered arrangement of them would constitute the philosophy of the law, and this is, in truth, what has been attempted in the Mimāṃsā."²

Prof. Max Muller in his book on the Six Systems of

¹ I. L. R. 14 All. p. 70.

² Colebrooke's Miscellaneous Essays, Vol. I, p. 342.

Indian Philosophy speaks of the Mimāṃsā Shāstras in the same strain as follows:—

Prof. Max
Muller on
Mimāṃsā.

"We may wonder why Purva-Mimāṃsā should ever have been raised to the rank of a philosophical system by the side of the Uttar-Mimāṃsā or the Vedānta, but it is its method rather than the matter to which it applied, that seems to have invested it with a certain importance. This Mimāṃsā method of discussing questions has been adopted in other branches of learning also, for instance, by the highest legal authorities in trying to settle contested questions of law. We meet with it in other systems of philosophy also as the recognised method of discussing various opinions before arriving at a final conclusion."

Dr. Thibaut
on Mimāṃsā.

Dr. Thibaut in his introduction to the translation of the Artha Samgraha observes as follows:—

"The Mimāṃsā certainly deserves greater attention than it has hitherto received. It has indeed none of the attractions which the other Darsanas derive from the speculative character of their contents; its scope is limited and the nature of the investigations in which it is engaged leaves no room for high flights of the imagination. But it possesses counterbalancing advantages. Its subject-matter is of a positive nature, its method is sound and its reasoning in most cases convincing."

Peculiar im-
portance of
the fixed
rules of in-

Rules of interpretation possess an importance in respect of the Hindu Law, greater than in regard to the law of any other country.¹ It is for this simple reason, viz.

¹ The six systems of Indian Philosophy p. 275.

² विरोधिबोद्धादितर्केन हलभ्यानि अनुकुलसु मीमांसादितर्कः प्रवर्तनीय एव ।
Kulluka's Commentary on Sloka 1, Ch. I., and also एतच्च
मीमांसातत्त्वस्यो विधीयते Medhatithi's Commentary on Sloka 1,
Ch. II.

that the Hindu Law has always been more or less independent of the State. A well-known Anglo-Indian writer in speaking of the Mahomedan Law observes that the Mahomedan Law has always been independent of the sovereign power, being under the control of the Doctors of the Islam religion. If this is true with regard to the Mahomedan Law, it is no less so as regards the Hindu Law. A brief history of the vicissitudes through which the Hindu Law had to pass from the dawn of society down to the present time, will at once show, that the Hindu Law is not a State-made law and that the administration of it was never at the absolute control of the sovereign authority. When the state takes the absolute charge not only of administering the law, but also of making it, questions of interpretation hardly possess any great importance; for, in such a case, whenever any doubt or difficulty arises, it is capable of being easily cut short by the supreme authority of the state either in the shape of legislation or by the fiat of the Judges having ultimate jurisdiction as constituted by the sovereign authority. But when the law is carved out of written religious works, to the authority of which people implicitly submit, and when the administration of such law is left more or less, as it must be, in the hands of men learned in religious books or supposed to be so, the necessity of fixed rules of interpretation arises as a matter of course and has naturally a greater importance than in the other case; for, in this case, the decisions of the persons entrusted with the administration of the law are open to discussion on the part of the brothers of the same profession, even if not on the part of the mass of people.

interpretation
as regards
the Hindu
Law.

✓

Now look at the history of the Hindu Law, which is as long as the history of the nation itself. Various are the stages through which the Hindu Law has passed.

History of
the Hindu
Law. First
Stage.

The first stage of the Hindu Law was the stage of which there was no writing. That during a considerably long period of the Hindu nation, rather of the Indo-Aryan nation, writing was unknown, is clearly shown by the terms *Sruti* and *Smriti* as applied to the religious tenets and the social rules respectively of this people. Both the terms go to show that the means, by which knowledge passed from one generation to another was, oral communication. Then what was the difference between the two—the *Sruti* and *Smriti*, hearing and remembering, respectively?

Difference
between
Sruti and
Smriti.

The difference seems to have been this. In the case of the *Sruti* the matter was embodied in set forms of language, mostly in metre, so that the words could be recited and sung. There were elaborate rules, known as *Shikshâ*, which taught the mode of learning the *Vedas* by rote and the manner in which they should be recited. It was altogether a mechanical process. But in the case of the *Smritis* it appears that what was communicated was the substance of a matter—information and thought—in which language was of no consequence. So the one was a matter of speech and the other was a matter of memory. The one represented the revealed law which admitted of no change, the other the floating traditions of custom and practice, which naturally influenced the conduct of the society. The former was naturally of superior authority to the latter, and, as a matter of course, when both covered the same ground, the revealed law would prevail over the unrevealed. But there is no doubt that

both came down side by side. This is clear from the fact, that many of the venerable Rishis, with whose names the Srutis are associated, are indetical with the names with which the Smritis are associated, such as Manu, Atri, Angiras, etc.

In this first stage there is every reason to conclude that the duties which are now done by courts of law, were done by the heads of clans and families, *i. e.*, the leading men of the Gotras and Prabarās, either by themselves or by getting an umpire selected by the parties.

Administra-
tion of
Justice in
this period.

"Let the Heads of the family, or the chief of the society, or the inhabitants of the city or of the village, select an umpire approved by both parties."¹

This was a stage in which the law was forming, their seeds being in the Srutis, which were then as even now regarded as the fountain head of all law.

The second stage of the Hindu Law commences with the introduction of writing. But it cannot be supposed that as soon as writing was introduced, the whole of the Smritis was reduced to writing. They were a floating mass of information, and it would naturally take time to reduce them to systematic written shapes. The Srutis, as meaning the Mantras (hymns), must have been reduced to writing in a much shorter time. But if there was delay in the Smritis being reduced to writing, the substance of them and some of the Brâhmanas found expression in written language, at first in the form of the Sūtras.

Second
Stage.

So, this second stage, I shall call the stage of written Sūtras. It is, however, very probable that the Sūtras existed before writing was introduced. Prof. Max Mul-

¹ Bhîṣṇu cited in the Smṛiti Chandrikā.

ler, however, by his minute researches on the subject has come to the conclusion that the Sutra period began when the period of the Mnemonic Sanskrit literature ended. He says "we have to begin our study of Indian Philosophy with the Sutras, these Sutras themselves must be considered as the last outcome of a long continued philosophical activity carried on by memory only."¹

In this period although the revealed law retained its old name *Sruti* (heard), it became the written Vedas or scriptures, which were to be read (*Swadhyaya*). The *Smritis* were represented in the written *Grihya* and *Dharma Sutras*, such as those of *Ashwalāyana*, *Sāṅkhyāyana*, *Gobhila*, *Apastamba*, *Pāraskara*, *Baudhāyana*, and *Vashishtha*, etc.

But these *Sutras* from their very nature, were far from being exhaustive, so they were naturally supplemented by the third grand source of law, as declared by *Manu*, custom and usage. So, in this period, the written law had been half formed and was growing by the addition of customary law. The distinction, however, between the *Srauta* law and *Smārta* law was marked enough in this period, as in the subsequent periods, the two going side by side with each other.

In this stage, along with the *Grihya* and *Dharma Sutras* mentioned, the *Manu Smriti* appeared in the shape of *Mānava Sutra*. There is no reason to doubt the conclusion of the European scholars that, the metric versions of the several *Smritis* in their codified forms, in the shape of *Samhitās*, were subsequent to the *Sutra* stage. But even in this infant age (*Sutra* stage) of

¹ The Six Systems of Indian Philosophy by Prof. Max Muller p. 6.

written law, rules of interpretation had become necessary and had been formulated more or less in the Kalpa Sutras of Ashwalāyana and the rest.

In the new development of the society in this stage, the principles by which leadership was recognised, had been enlarged. To the class of leaders, by reason of being heads of clans and families, was added a class of leaders by learning, as the Vedas had become a subject of learning, having been reduced to writing; and a class of learned men had been formed. Naturally, therefore, in this stage the learned class had a predominant share in the administration of justice. This learned class along with the heads of clans and families, and, in the case of villages and towns, with the villagers and townsmen, formed the sources from which the Judicatories were drawn; the king being also a factor where there was one.

Administra-
tion of
Justice in
the second
period. ✓

"The villagers, the townsmen, assemblages of families, associations of artisans, and a scholar in the *four sciences*, persons belonging to the same clan, allied families, constituted judges, and the king [are several judicatories.]"¹

In this (second) period, the law which the courts, constituted as indicated above, had to administer, was evidently derived not only from the Srutis and the Srauta Sutras and the Grihya Sutras but also from practices and usages such as prevailed in those times. The Srauta Sutras were Sutras which regulated chiefly the acts of worship and sacrifices; and the Grihya and Dharma Sutras, acts relating to domestic duties and duties between man and man.

¹ Bhṛigu cited in the Smṛiti Chandrika.

Third stage
that of
codification.

Now we come to the third stage, the stage of Samhitā or codification. In this stage the Vedic literature, as well as the Smṛiti literature, having both been enlarged and amplified there was the need of classifying and codifying them. Thus, the Vedas were embodied in the forms of the Samhitās and were classified, and their branches were elaborately exhibited. A new departure was also taken in the Smṛiti literature, from the Grihya and Dharma Sūtras to the Samhitās or institutes which were called the Dharma Shāstras. The Aryan power in the land had extensively increased and many were the people and territories which were brought under the Aryan rule. Great kings and great kingdoms had come into existence, and the administration of justice had become an important factor in civil life. With these changes a demand for large and comprehensive institutes of law necessarily arose, and this demand was satisfied. The subject of the change from the Grihya and Dharma Sūtras to the various Samhitās or the Dharma Shāstras, has engaged the attention of many European scholars, such as Prof. Max Muller, West and Buhler. They considered the Sūtras to be more ancient than the metrical codes. The reasoning, by which this view is supported, will be found in Max Muller's History of Ancient Sanskrit Literature, pp. 132, 199, 206—208, and his letter printed in Morley's Digest, Introduction.

Scholars have also discussed the question, as to whether the Dharma Shāstras as they appear now came into existence as binding treatises, explaining the law as it existed at the time, having the same character as the institutes of Justinian; or they were merely literary works in which the social views of distinguished writers

were published. The Hon'ble Dr. G. D. Banerjee in his Tagore Law Lecture, inclines to the second view and Dr. T. N. Mittra inclines to the first view. Thus these two Doctors differ. It appears from the whole history of the subject, that our Dharma Shâstras do not come under the category of literary productions. They were text books on law, such as, Blackstone's Commentary and the like ; and had neither the force of statutes on the one hand, nor, on the other hand, were they mere literary productions with no pretence to authority.

The more important question in connection with my subject is that of the mode in which the law was administered in this period. It would appear that as the law itself had become elaborate and extensive, so were the machinery of administration and rules of procedure. There were two sets of courts available to the litigants; firstly, the courts constituted directly under the State authority; secondly, the courts of a popular character and constituted by the people themselves. On this subject, instead of giving tedious descriptions from the sanskrit works, I would place here the short description given by Colebrooke. Under the head of State courts would come the following:—

Administra-
tion of
justice in
this period.

“Places of resort for redress are:—

State Courts.

i. “The court of the sovereign, who is assisted by learned Brahmins as assessors; it is ambulatory, being held where the king abides or sojourns.”

ii. “The tribunal of the Chief Judge appointed by the sovereign and sitting with three or more assessors not exceeding seven. This is a stationary court, being held at an appointed place.”

iii. "Inferior Judges appointed by the sovereign's authority for local jurisdictions; from their decision appeal lies to the court of the Chief Judge, and thence to the Raja or King in person."

Popular
Courts.

"Under the head of popular courts would fall the following":—

i. "Assemblies of townsmen, or meetings of persons belonging to various tribes and following different professions but inhabiting the same place."

ii. "Companies of traders or artisans; conventions of persons belonging to different tribes, but subsisting by the practice of the same profession."

iii. "Meetings of kinsmen, or assemblages or relations connected by consanguinity. The technical terms in the Hindu Law books for these three gradations of assemblies are:—i. Puga, ii. Sreni, and iii. Kula."

"Their decisions or awards are subject to revision; an unsatisfactory determination of the 'Kula' or 'family' is revised by the 'Sreni' or company, as less liable to suspicion of partiality. From the award of the 'Puga' or assembly, an appeal lies according to the statutes of the Hindu Law, to the tribunal of the 'Prad Vivaka' or Judges; and finally to the court of the Raja, or Sovereign Prince."¹

Knowledge
of Mimāṃsā
a necessary
qualification
of assessors.

It would seem that the King's court is to be assisted by learned Brahmins as assessors. The qualifications of these assessors are given at length. Leaving the other qualifications apart it is important to note, that acquaintance with sacred law, which includes rules of Mimāṃsā according to Yājñavalkya,² is one of the qualifications.

¹ Colebrooke, *Miscellaneous Essays*, pp. 401–2.

² Yājñavalkya, i, 3

"The assessors of the King's Court of Judicature should be men skilled in sacred law, sprung from good families, rigidly veracious and strictly impartial towards friends and foes."¹

Then, again, as regards popular courts consisting of assemblies of qualified persons, one member is to be a person who, according to Vashishtha knows the Mimāṃsā.

"Four students (of the four Vedas), one who knows the Mimāṃsā, one who knows the Angas, a teacher of the sacred law, and three eminent men who are in three (different) orders, (compose) a legal assembly consisting of at least ten (members)."²

The above-mentioned verse is also quoted in Bau-dhayana.³

Thus, the paramount importance of a knowledge of the rules of interpretation has been prominently recognized from the earliest times. In fact the history of the administration of the Hindu Law, so far as I have briefly given it, shows it. And now I might at once proceed to the consideration of the Mimāṃsā Sūtras as laid down by Jaimini, whose followers addressed themselves to that developed state, both of the Srauta literature and of the Dharma Shāstras, which was found in the period, called by me the Samhita period. But it would be more satisfactory to continue the brief survey of the history of the Hindu Law two steps more, namely, the Bauddha period and the Mahomedan period.

It would appear that in the Buddhistic period there was no revolution in the administrative machinery of the

Fourth stage:
Buddhistic
period.

¹ 7 Narada I. S. 2. 7. 1.

² Vashishtha, ch. III, p. 20.

³ Bauddhayana, Prasna I, Adhyaya I, Kandika I.

country; but only the religion of the sovereign and of the administrative authorities was altered. This, no doubt, introduced certain modifications in the rules of administration. It is not very easy to determine the extent of the modifications thus introduced. That Buddhism did not interfere with the Hindu Law and Hindu usages and customs, is shown by the significant fact that the Burmese Law-Books do not only profess to be based on the code of Manu, but they have actually a great number of rules in common with that work.

The great founder of Buddhism never did anything to suppress liberty of thought and action; on the contrary, his great object was to promote these, and to teach the doctrine that the mission of every individual was to improve his character and life, untrammelled by the fetters of dogmatism and conventionalism. After his time his followers in true faithfulness to their great master, were inclined to foster, if not to create, representative institutions. Even in settling the doctrines of the state religion they adopted the principle of being guided by representative councils. Therefore, the existing system of Hindu popular institutions, such as village communities and assemblies, had their full play under the Buddhistic rule. But any compilation or digest of Hindu law, that might have come into existence in this period, would naturally keep it more or less clear of the ritualistic dogmas of the Hindu religious books.

But was any such compilation or digest undertaken during the pretty long period of Buddhistic rule? Undoubtedly the King's court and courts subordinate to it, had not ceased to exist during this period and it is also undoubted that these courts did not ignore the Hindu Law

regarding property. Then how did these Buddhistic courts administer the Hindu Law? Orthodox Brâhmin assessors could hardly be expected to co-operate with them. These considerations tend to show that there was some digest or compilation of the Hindu Law made in their time, which was more or less free from the characteristic features of Hindu conservatism. It would appear that Biswarupa's commentary of Yâjñavalkya which was followed by Vijnâneshwara in writing the *Mitâksharâ* was such a book. Thus *Mitâksharâ* bears the impress of Buddhistic influence.

Mitâksharâ begins by discarding the fundamental principle taught by the Vedas, that property is for spiritual benefit, and that its devolution depends on considerations of such benefit alone. Then, again, the tendency shown in the Code of Manu and most of the *Samhitâs* is to allow free partition and devolution; certainly, there is nothing in them to tie up property; but the Bauddhas favouring monastic institutions were naturally partial towards the principle of perpetuity. And the *Mitâksharâ*, too, characterises itself by favouring the same principle. Then, again, what can be the reason for the *Mitâksharâ* becoming the governing law for almost the whole of India to the exclusion of Manu's Code with able commentaries on it? This would be hard to understand except by supposing that the Bauddha king considered Manu's Code to represent orthodox Hinduism in a greater measure than the Yâjñavalkya *Samhitâ*, as explained by Biswarupa, who was followed by Vijnâneshwara. They and their Hindu successors adopted this work for the guidance of their courts throughout their dominions, where it still prevails except

The impress
of Buddhism
on the *Mitâk-*
sharâ.

in Bengal from which it was displaced by Jimutavâhana, who apparently flourished after the complete revival of Hinduism. In this connection, it may also be noted that according to Webber¹, Yājñavalkya is virtually described in the Mahābhārata as a Buddhist teacher.

These are considerations which naturally lead one to think that Vijnāneshwara, the author of Mitāksharā, might not have been an orthodox Hindu. He was an ascetic (Sannyāsi). It is said, he was a disciple of Sankarāchārya, as Colebrooke observes. But there is no certain proof of this, as has been shown by some writers.² But that he was an ascetic is an admitted fact.³ For an orthodox Hindu Sannyāsi to write a large book on law is not an usual thing, while one with a pro-Buddhistic tendency, might well do it. Mitāksharā's treatment of the subject of succession of Yatis and Sannyāsis is characteristic. However, my justification for entering on this question is, that I shall have largely to consider the principles of interpretation adopted by the Mitāksharā. And, it would help one to understand these principles better, if one can form an idea of the circumstances under which the book was written. A few words more are necessary to explain the influence which the Buddhistic rule had upon the Hindu Law and the mode of administering that law.

Agni purāna evidences development of the Buddhistic period.

Agnipurāna is a treatise written after the Buddha period; for, it refers to events connected with Buddhism. Chapters 252 to 258, both inclusive of this Purāna are devoted to the subject of law, the law courts and judi-

¹ Ind. Lit. p. 237.

² Nelson—The Scientific study of the Hindu Law, p. 84.

³ Buhler Journal Bombay, R. A. S., Vol. IX, No. XXV.

cial proceedings. In chapter 253, (Secs. 21 to 37), the constitution of the courts is described much to the same effect as they have been described to have been during the period before Buddhism. This shows that there had not been much change in this respect during the Buddha period. But as regards the popular assemblies, it appears that during the Buddhistic rule, their scope and functions had been considerably enlarged and their position more firmly established. This would appear from the following passages in chap. 257, (from secs. 38 to 47) :—

“The man who would rob a public property, as well as the one who would dishonour and violate the decision of the public assembly of his country, should suffer an exile, and all his goods and chattels should be confiscated. All questions of public utility should be submitted to the decision of the public assembly (*Samuha Hitabâdi*), and their decision shall carry the weight of law. Any one acting in direct contravention of such a decision, shall be liable to fine. A man deputed on a public errand by a public assembly and gaining anything in connection therewith should deposit the same in the public purse. In the alternative he should be liable to refund to the public exchequer eleven times of its value, if not voluntarily depositing the same.”

“The executive committee of such an assembly should consist of men, pure in conduct, and well versed in the Vedas, and who would be above all greed and corruption; and the assembly should carry out their orders without the least questioning. The same shall hold good in the case of trade guilds, as well as in the guilds of artisans, or in the councils of men professing a religion, other than the established one of the country.

The king should maintain the separateness of those trade guilds, and encourage the public assembly of his realm."

It would also appear from this Purāna that almost all the branches of law, had attained a degree of development which may well compare with the Anglo-Indian law of the present time. The law of property, of contract and mortgage, of torts and crimes, of procedure, evidence, and limitation, all seem to have been understood and settled to a degree, by no means unsatisfactory.

Hence, necessarily, the rules of interpretation were also placed on a more liberal basis, as will appear from the following passages. In secs. 50 to 52, ch. 253 occurs the following: "A principle of equity should be deemed as a better authority in the conflict of the tenets of law codes on a particular point."

The resemblance between the law sections of the Agnipurāna and the Vyavahāra Kānda of Yājñavalkya is striking.

The Mahomedan period.

The fifth and the last epoch of the Hindu Law, that I shall briefly notice, is that of the Mahomedan rule. Colebrooke observes: "It would be an interesting subject of inquiry to determine how far the Hindu courts and laws were allowed to remain in force during the five centuries and a half of Mahomedan predominance throughout India." Unfortunately, however, there is a little of recorded information on the subject. But we have these two significant facts, that in the 16th century, Dalapati, one of the ministers of the well-known Nizam Shah dynasty of Ahmednagar, wrote an enormous Digest of Hindu Law called *Nrisinhaprasada*; and it also appe-

ars that Todar Mal, the able and powerful Hindu Minister of Akbar, wrote a similar Digest of Hindu Law named Todarananda's Vyavahâra Saukhyas, which contains among other things a chapter on Civil Procedure and the Law of Evidence. A complete manuscript of the former book is preserved in the Sanskrit College Library, Benares, and a manuscript of the first section of the latter book is to be found in the library of the Deccan College, Poona.

However, it is clear that the Mahomedan rulers did not interfere with the Hindu Law. "By the original theory of the Mahomedan government," as observed by Elphinstone, "the law was independent of the State or rather the State was dependent on the law."¹ If this was so with regard to the Mahomedan Law, by instinct the Mahomedan rulers would let alone the Hindu Law. Besides, it was in no way profitable to them, nay, positively inconvenient and troublesome to interfere with the internal social economy of the Hindus. All they cared for, was the realisation of the revenue, as Sir H. Maine observed. Accordingly, they contented themselves with introducing changes in the revenue law of the country.

The Pathans in their own country had a system of feudalism, greatly resembling that which obtained in mediæval Europe. With their rule that system of feudalism was introduced into India in connection with the revenue system, in the shape of the Zemindary institutions. Under Zemindary system the raiyats were obliged to render certain services and payments to Zemindars, which were much like the services and payments of the vassals of England to their Lords. The *marocha* was a sum to be paid by a raiyat to the Zemindar, on occasion

The Pathan
feudal
system.

¹ Elphinstone's History of India, p. 484.

of a marriage in the raiyat's family. Then what were called the *bhikshas* and *mangans*, were contributions to be made by the raiyats on the occasion of marriage, Sradha and the like, in the family of the Zemindar. I need hardly refer to the other *mathuts* and *abwabs* which are matters of history. As for the raiyats fighting for the Zemindars the Magistrates of the present day have not yet been able to completely eradicate the practice. The Zemindars under the Pathan rule were much like the Barons of the mediæval age. And the Zemindars had their courts, which were like the courts of the Barons of England. The effect of this change was that, the popular assemblies, which we have seen to have existed down to the end of the Hindu period, fell into disuse. But yet the village assemblies and village communities remained.

The adminis-
tration of
Hindu Law
in the
Pathan
times.

The administration of the Hindu Law under the Pathan rule was in simple cases in the hands of the village communities, while in complicated questions, the parties generally used to state their cases before any distinguished Pundit or College of Pundits, whose decision was accepted by them.

The Mogul
System of
administra-
tion.

With the Mogul conquest and the extension of the Mahomedan dominions, two other distinct classes of tribunals arose: "Those," to quote the words of Elphinstone, "of the Cazis which recognised the Mahomedan Law alone and which acted on application and by fixed rule of procedure, and those of the officers of Government whose authority was arbitrary and undefined."¹

Elphinstone's History of India, p. 484.

The highest Court was "composed of an officer named Mir Adl (Lord Chief Justice) and a Cazi. The latter conducted the trial and stated the law; the other passed judgment and seems to have been the supreme authority."¹ But the cases decided by this tribunal were generally cases between Mahomedans, as also cases between Hindus relating to contracts, torts and crimes. As regards questions involving principles of Hindu Law of property, they were left to the Hindus themselves who got them settled by Pundits or Colleges of Pundits as stated above. As regards Emperor Akbar, he followed more of the Hindu religion than the Mahomedan religion. Consequently, he allowed no sort of interference with the Hindus. The few measures that he adopted with regard to the Hindus were no more than what a wise Hindu ruler would have done, *i. e.*, the prohibition of trial by ordeal, etc.

No doubt, questions of Hindu Law during the Mogul rule used sometimes to be brought before the Dewan or local revenue officer. The Dewani Courts, however, dealt primarily with revenue questions, but in special cases where the Dewan was a Hindu, he probably took cognisance of questions of Hindu Law and got them settled by taking the opinions of Pundits.

The summary history of the fortunes of Hindu Law given above clearly shows, that the duty of interpreting the Hindu Law was always in the hands of Brahmins, conversant with that law, and they, in order that their decisions might carry weight, were ever bound to follow fixed principles of interpretation, mainly deriving those

The
Mimāṃsā
rules not a
dead letter.

¹ Elphinstone's History of India. p. 544.

principles from the highest authority on the subject—the Mimāṃsā Sūtras. Therefore, the Mimāṃsā rules have never been a dead letter. They were living principles down to the end of the Mahomedan rule.

Vedic origin of the Hindu system of interpretation.

It is scarcely necessary to tell you that the Hindu learning regarding the principles of interpretation, like every other branch of knowledge among the Hindus, owes its origin and development to the study of the Vedas. Just as grammar, astronomy, poetical composition, etc., were among the Vedāṅgas (branches of the Vedas), so were the Kalpa and Nirukta, which more or less dealt with questions of interpretation. The Kalpa Sūtras, also called the Prayoga Sūtras (rules of application), undoubtedly served to a great extent the purpose of rules of interpretation, such as, the Sūtras of Ashwala-yana, Apastamba and others. The author of the Mimāṃsā aphorisms does not admit their authority, and takes exception to them on the ground "that they have no system in them,"¹ and further that they are not the sequence of Sruti-vākyas (Vedic propositions).² Now to proceed to the subject of Jaimini Sūtras.

An incidental observation regarding Jaimini's date.

Though I shall not enter at this place on speculations as to the time at which Jaimini's Sūtras, called the Mimāṃsā Aphorisms, were composed, yet I must say that the statement, in the following passage of Chief Justice Edge's judgment, that Jaimini lived in the thirteenth century of the Christian era, is a mistake on the face of it. The judgment has the following: "Those rules of construction are to be found in the Mimāṃsā of Jaimini. Jaimini, as we have been informed by counsel in the course of argument, lived in the thirteenth

1 असंनियमात् । Jaimini I. iii. 12.

2 अवाक्यशेषात् । Jaimini I. iii. 13.

century of the Christian era. He was consequently subsequent in date to the *Mitāksharā* and anterior in date to the *Dattaka Mimāṃsā* and the *Dattaka Chandrikā* etc.¹

Jaimini's Sūtras are quoted and discussed in the *Mitāksharā*. They are referred to as the venerable old authorities. So, manifestly, they cannot be subsequent in date to the *Mitāksharā*. By the Hindu tradition, Jaimini's Sūtras preceded the Vedānta Sūtras. The very names *Purva Mimāṃsā* and *Uttara Mimāṃsā* (the anterior *Mimāṃsā* and the posterior *Mimāṃsā*), as applied to the Jaimini's Sūtras and the Vedānta Sūtras, would indicate it, unless the words, the 'Uttara' and 'Purva,' be taken to refer to the two parts of the Vedas. Even if the two were simultaneous, as might be inferred from the cross-references, there could be no doubt of the great antiquity of the *Mimāṃsā* Sūtras. The Sūtras must have been old things when Bhartrihari quoted them, and the date of Bhartrihari's death has been ascertained to be 650 A. D.² Again, very considerable time must have elapsed between Jaimini and Sabara Swami, his commentator; between Sabara Swami and his commentator Kumarila Bhatta; and between Kumarila Bhatta and Medhatithi, who quotes him; and between Medhatithi and Vijñāneshwara, who quotes Medhatithi in the *Mitāksharā*. Therefore, not only is *Mitāksharā* subsequent to Jaimini, but the distance of time between Jaimini and Vijñāneshwara must have been indeed, immensely long.

But, whatever be the date of the Sūtras, they are decidedly the most comprehensive and prevailing

Nature and
purpose of
the Sūtras.

¹ I L. R. 14 All. p. 70.

² Max Muller's six Systems of Indian Philosophy, p. 118.

authorities on the subject of interpretation. Jaimini's work, for the first time, reduces the subject of interpretation to what is called Darshana or Philosophy; and in effect, may well be regarded as a scientific system of interpretation. The object and aim of the great work is stated in itself at the very outset. It is shortly stated in the opening Sutra, coupled with the second Sutra. These two Sutras are translated by Mr. Colebrooke as follows:—

(1) Now then, the study of duty is to be commenced.¹

(2) Duty is a purpose which is inculcated by the command.²

Dr. Ballantyne translates them as follows:—Aph. 1.—Next, therefore, [O student that hast attained thus far] a desire to know Duty (Dharma) [is to be entertained by thee]. Aph. 2.—A matter that is a Duty is recognised by the instigatory character [of the passage of scripture in which it is mentioned].³

Thus, the whole object and aim of Jaimini's Sutras, is to help the student in studying the texts, which indicate the duties to be performed by men. Now, duty is only the counterpart of law. The second Sutra defines duty (Dharma) to be virtually that which is determined as such by the Revealed Law texts. Therefore, a critical study of the texts of Revealed Law, in other words, the interpretation of them, is the subject matter of Jaimini's Aphorisms.

Sruti Law
and Smriti
Law.

The expression 'the Revealed Law texts' should not be misunderstood. If you understand it to mean only the texts of the Vedas, it will be a mistake. For,

1 अद्यात्तौ धर्मजिज्ञासा !

2 बोधनालक्षणेऽर्थो धर्मः !!

3 The Mimāṃsā Aphorisms in Sanskrit and English, p. 4.

according to the Hindu system of jurisprudence, although the texts of the Vedas are the only revealed texts, and the texts of the Smritis are not revealed, yet the law contained in the texts of the Smritis is treated as the revealed law, inasmuch as it is presumed to be the sequence and the necessary concomitant of that law. According to one theory, texts of the Smritis had corresponding texts in the vedas which are now lost. Be that as it may, the distinction that we now make between the civil law and religious law, or between the temporal law and the spiritual law, has hardly any place in the orthodox Hindu mind. Jaimini devotes an entire chapter, namely, chapter iii of the first book, in explaining how the law contained in the unrevealed texts of the Smritis with certain exceptions must be treated as being the necessary sequence of the law contained in the revealed texts of the Vedas. In short, the *Sruti Vidhis* (the rules of law contained in the revealed texts of the Vedas) are the direct revealed law, while the *Smriti Vidhis* (the rules of law contained in the unrevealed texts of the Smritis) are the indirect revealed law. Partha Sarathi Misra explains this point in his note to Sutra 1. ch. iii. Bk. I. Thus the rules and principles of interpretation laid down in the *Sutras* apply equally to the scriptural or spiritual law as to the civil or temporal law.

By the way, I may tell you here that the *Mimāṃsā* system of interpreting the Vedas is not like the system adopted by Christian theologians for interpreting the Bible. This is a system known by the name of hermeneutics. It is an effort to reduce to a systematic shape the various forms of interpretation adopted by

Hermeneu-
tics and
Mimāṃsā
compared.

Christian theologists. The great difference between the hermeneutics and the Mimāṃsā Darshana is this :—The interpreters of the Bible do not so much look to the words of the Bible for interpretation as to the supreme moral force from which they proceeded. This system, in fact, goes beyond the words to elicit their meaning. The Mimāṃsā, on the other hand, absolutely looks to the words of the Vedas, and to the words alone for their meaning. The Mimāṃsakās start with the words, and then follow out their consequences. This constitutes the main difference between the systems of interpretation adopted by the Hindus and the Christians respectively of their sacred books. In fact, the Mimāṃsā system is identical with the judicial principles of interpretation.

Application
of Mimāṃsā
rules to civil
law not
strained.

There is no doubt, however, that primarily the Sūtras are directed to an investigation of spiritual duty, and of the spiritual law imposing that duty. So, it may be said, that the rules and principles of interpretation framed in this view, although not wholly inapplicable to the civil law, have only a forced and strained application to it, and that, therefore, their utility in expounding the civil law is practically but little. The answer to this is, that the definition of law as given by Jaimini taking it to be a definition only of the spiritual law, is identical with the definition of civil law given by the western jurists, and that Jaimini's treatment of the subject as a whole is on the same lines as those of our civil jurists.

In order to show the similarity of Mimāṃsā jurisprudence and modern jurisprudence, and also to indicate the general features of the Shāstric rules, I proceed to give

a brief analysis of Jaimini's jurisprudence and its analogy to modern jurisprudence. An idea of the general feature of Jaimini's jurisprudence is essentially necessary to understand the rules of interpretation of Hindu Law as propounded by him.

Mr. Austin defines law as follows:—"A law is a command which obliges a person or persons, and obliges generally to acts or forbearances of a class." * * * "In language more popular but less distinct and precise, a law is a command, which obliges a person or persons to a course of conduct."

Modern definition and Jaimini's definition of law.

You have already seen Jaimini's definition of duty. That definition by implication gives the definition of law, the two terms being cor-relative to each other as pointed out by Mr. Austin in the following passage :

"It also appears from what has been premised, that command, duty, and sanction are inseparably connected terms; that each embraces the same ideas as the others, though each denotes those ideas in a peculiar order or series."

Now examine once more Jaimini's definition. It is this: "What is to be fulfilled as the object of a command, is duty (Dharma)."¹

There are only three words in the definition—Chodanâ, Lakshanâ, and Artha, the first two being a compound word meaning that which is characterised by a command, the last 'Artha' means the object to be fulfilled. That the word 'Chodanâ' means command, admits of no doubt. It is, however, a revealed command, though Mr. Colebrooke translates it simply as a command. This

¹ श्रीदत्तात्रेयः, धर्मशास्त्रम् : । Jaimini I. i. 2.

idea of a divine command forms the marrow of the Hindu religion. In Gâyatri, the essence of the Vedas, the word Chodanâ occurs with the prefix 'Pra,' as the governing element of the whole Gâyatri, in the following clause in it: "By whom our thoughts must be commanded."

Modern idea
and Jaimini's
idea of
sanction.

The identity between Jaimini's definition and Austin's definition of law has not yet been completely shown. By Austin's definition, as he has explained it, the command must carry a sanction with it, that is, there should be an element in it for its enforcement. According to Austin, the sanction must consist of a fear of some evil to be inflicted, in case of non-compliance with the command. But this view is not shared in by Bentham, the venerable father of Jurisprudence. Mr. Austin himself says: "By some celebrated writers (Locke, Bentham and Paley), the term sanction or enforcement of obedience is applied to conditional good as well as to conditional evil; to reward as well as to punishment." A reward, however, in order to be cogent as a sanction, must consist of something which is not ordinarily attainable by the persons to whom the command is addressed. For, if it were so attainable, they might well disregard the command, confident to secure the worth of the reward in their own way.

Now, let us examine whether there is any sanction to the Vedic 'Chodanâ' (command). Jaimini addresses himself to this question in the third Sutra:—"Let us examine the reason why the Vedic command is obligatory."¹

1 धियो यो नः प्रचोदयात् ।

2 तस्य निमित्तपरीतिः । Jaimini I. i. 3.

The answer is given in the fifth Sutra which runs as follows:—

“The reason consists in the eternal concomitancy between the word of the command and the purpose to which it is directed. The means of knowing this eternal connection is revelation which is unfailing in leading to transcendental benefit (heavenly bliss) being independent, as Bâdarâyana has it.”¹

Thus a sanction is shown to exist in the definition of Law given by Jaimini. It is the certainty of obtaining, by compliance with the ‘Chodanâ’ (the revealed command), eternal bliss not otherwise obtainable.”² This sanction is called ‘Apurva’ (unprecedented), being, in short, a reward beyond the reach of ordinary human effort. One may not believe this. But that is immaterial to the question. It is clear that the Mimânsâ Shâstra claims a sanction for the Vedic command, though it is, unlike the sanction, secured by the force of the bayonet.

Mr. Colebrooke puts the matter of the ‘Apurva’ thus:

“The subject which most engages attention throughout the Mimânsâ, recurring at every turn, is the invisible or spiritual operation of an act of merit. The action ceases, yet the consequence does not immediately ensue; a *virtue* meantime subsists unseen, but efficacious to connect the consequence with its past and remote cause, and to bring about at a distant period, or in another

Mr. Colebrooke on Apurva sanction.

1 औत्पतिकः तु शब्दस्य अर्थेन सम्बन्धः तस्य ज्ञानम् उपदेशः अत्यंतिकः च अर्थे अनुपलब्धे तत्प्रमाणं बादरायणस्य अनपेक्षत्वात् । Jaimini I. 1. 5.

2. Kulluka's commentary on sloka 1. ch. ii., and also Medhatithi's commentary on sloka 1. ch. ii.

world, the relative effect. That unseen virtue is termed *Apurva*, being a relation super-induced, *not before* possessed."¹

Dharma and
Adharma.

This *Apurva* Sanction consisting in the certainty of a superhuman benefit, however, is the sanction of positive Vedic commands which preponderate in the Vedic law (*chodanā*) as contradistinguished from negative or prohibitory command (*Nishedhas*). As regards the latter, the sanction consists of punishment, such as, penances and in extreme cases, the suffering of the pangs of hells, accruing when what is absolutely prohibited is done. When an act enjoined is done, it is *dharma* (fulfilment of duty). When an act prohibited is done, it is *adharma* (violation of duty). *Dharma* is secured by the sanction of superhuman benefit; *Adharma* is prevented by the sanction of superhuman punishment, and in some cases by human punishment as well.

Jaimini's
classification
of Vedic
texts

Then, again, if you examine the classification that Jaimini makes of the texts of the revealed law, obligatory or otherwise, you will see that, that classification far from being repugnant to our modern ideas of civil law throws considerable light on these ideas. He classifies the texts of the revealed law into

1. Obligatory texts called *Vidhis*.
2. Obligatory texts called *Nishedhas* or *Pratishedhas*.
3. Non-obligatory texts called *Arthavadas*, which are connected with particular *vidhis*.
4. Non-obligatory texts called *Namādheyas*, which are of the nature of general definitions and denominations, and are not connected with any particular *Vidhi*.

1. Colebrooke's Miscellaneous Essays, P. 343.

5. There is a fifth class, which is called the *Mantras* which we need not consider for the present, being a peculiar class of texts only occurring in the Vedas.

There is no difference between a Vidhi and a Nishedha in principle, the one being a positive command and the other negative. Now, the distinction between a Vidhi and an Arthavâda is this. A Vidhi contains a command imposing an obligation. An Arthavâda is a statement connected with a Vidhi without adding to it or detracting from it.¹ It may explain the reason of a Vidhi,² it may illustrate it,³ it may expatiate on the benefit of it,⁴ or it may present its effect in a tempting form to those who may not catch the spiritual value of it. Roughly, an Arthavâda may be called an explanatory or illustrative text, or a text in the nature of a recital or preamble. According to our modern legal ideas, an explanation or illustration can never be allowed to control the words of an obligatory rule. Jaimini also emphasises that principle. Jaimini maintains that if you take an Arthavâda as adding to a Vidhi, then it becomes a separate additional Vidhi itself.⁵ And also if you understand it as detracting from a Vidhi, then it becomes a separate conflicting Pratishedha Vidhi (negative command), the one

The difference between Vidhi and Arthavâda.

1 अर्थवादानां हि सिद्धरूपोऽर्थो न हि तदर्थस्य कर्तव्यता प्रतीयते। Medhātithi's commentary on sloka 3, ch. I, and Kulluka's commentary on S. 6, ch. II, and see also Raghunandan's Prayaschittatva (Jibānanda's Edition. p 480).

2 हेतुवन्निगदाधिकरणम् । सूत्रेण जुहोति । Jaimini I. ii. Adhi, 3.

3 विधिवन्निगदाधिकरणम् । औदुम्बरो यूषीभवति । Jaimini I. ii. Adhi. 2.

4 विधिनाल्लेखवाक्यात् सुखर्थेन विधीनां स्युः । Jaimini I. ii. 7.

5 विधी च वाक्यमेदः स्यात् । Jaimini I. ii. 25.

neutralising the other. He would not allow this so long as the text was capable of being construed as an Arthavâda. But an Arthavâda, though it cannot be allowed to interfere with the force of a Vidhi, is yet useful, as Jaimini explains, to facilitate the understanding of a Vidhi and its application and is thus its concomitant.¹

Namadheya. As regards the class of texts called *Namadheyas*. Literally, they are descriptions of names; practically they correspond to what in our modern legislation form definitions and general clauses originating in the Apurva sanction but not containing a command in itself.²

**Difference
between
Arthavâda
and Nama-
dheya.**

Namadheya texts are really distinguishable from Arthavâda texts in not having reference to a particular Vidhi; but having, as a definition, a bearing upon the general scope of the subject.³ If this is the distinction between Namadheya and Arthavâda, it is not foreign to our modern ideas of law. Medhatithi, would somewhat extend the force of the word Namadheya.⁴ A text may be in the form of a Vidhi, but in substance it may be a Namadheya⁵.

Some writers would limit the term Namadheyas to the proper names of some ceremonial acts. The language of Sûtras, however, is comprehensive and general enough to include all cases of nomenclature and definition. Sometimes the ordinary meaning of a word or a set of

1 तुल्यं च साम्प्रदायिकम् । Jaimini I. ii. 8.

2 अपि वा नामधेयं स्वाद्यदुपलक्षणपूर्वमविधायकत्वम् । Jaimini I. iv. 2.

3 यस्मिन् गुणोपदेशः प्रधानतोऽभिसम्बन्धः । Jaimini I. iv. 3.

4 अत्रैवादि तु प्रमाणांतरानुसारं गुणवादी न दोषाय इति । Medhatithi's commentary on sloka. 103. ch. 1.

5 स्त्रीनादिशब्दानां ग्रामनामताधिकरणम् । Jaimini I. iv. Adhi 4.

words must be ignored when they are used merely as proper names¹.

You have now got an idea as regards the relation between a Vidhi and an Arthavâda, and that between an Arthavâda and a Namadheya. But you have not yet got a definition of Vidhi except so far as appears from the definition of Dharma (duty). The definition of duty is "Chodanâ Lakshanâ Artha" (what is to be done by virtue of a command). From this definition one might think that the shortest definition of a Vidhi was—"Chodanâ Lakshanâ Shabda" (an expression having the character of a command). But this definition would not be quite faultless as the word 'Chodanâ' would not imply a sanction in connection with the word 'Shabda', in the same way as it does in connection with the word 'Artha,' in the definition of duty. Therefore the Mimânsakâs adopt another definition of Vidhi. It is this:

Definition
of Vidhi.

"Aprapta prapako Vidhi."

"A Vidhi is that which puts one in a position which ordinarily he is not apt to get into." The meaning of this will be clear from the following. Every man wants to eat when hungry. If there be a command, "Eat when you are hungry", such a command does not indicate the necessity of a sanction. But if there be a command, "Maintain a wife whom one forsakes," this would urge the doing of something which the man would not be apt to do. In other words, it would be *aprapta prapaka*, indicating the necessity of a sanction, that is, the necessity of a compelling power. Thus, by the definition of Vidhi as given by the Mimânsakâs viz., *aprapta prapaka*, a sanction is necessarily implied. It is to compel one

¹ शब्दवादिशब्दानां नामधेयताधिकरणम् । Jaimini I. iv. Adhi 10.

to do what he would not otherwise be very likely to do.

The definition of a Nishedha Vidhi is somewhat the reverse of that of a Vidhi. A Vidhi is *aprapta prapaka*. "That which puts one in a position which he is not ordinarily apt to get into." A Nishedha is against *ragu prapta*, that is, it is a "prohibition of what one is apt to do by the impulse of some particular passion."

Leaving the consideration of Nishedha for the present, you should pursue a little further, the distinction between a Vidhi and an Arthavâda, and that between an Arthavâda and Namadheya, in the light of the above definition of Vidhi. That which makes *prapta* of an *aprapta*, i. e. which compels one to do what he would not spontaneously do, is the inflexible will of the law-maker. Now in the case of an Arthavâda there is no expression of a will. It is only an observation in the nature of a commentary, just as if the law-maker descended from his position as such, and condescended to point out the merit of the law laid down, from the point of view of the ordinary run of people. Thus, roughly speaking, an Arthavâda is in the nature of a gloss made by the law-maker himself; and in the case of the Vedas by the Divine Law-maker, although the use of that expression would be against the received doctrine.

If a thing has an *angangi* relation with a Vidhi, i. e. if it is a requisite part and parcel of a Vidhi, then it is either an applicatory Vidhi or a *prakarana* and is of an authoritative character, but not so if it is only an Arthavâda. An Arthavâda, you ought to know, is not *aprapta prapaka* but only a *prapta prapaka* in the sense that it relates to what is already concluded by a declared Vidhi.

A Namadheya is an independent clause. It is not in the nature of a gloss on a particular Vidhi. It is a statement made by the lawmaker in his character as such, and is in this sense authoritative ; but it simply states what is what. Such a statement does not directly bear upon any particular Vidhi. By defining things it serves to illucidate the main purpose of the Vedic Law. It serves to show what things would come under the category of Swargakama and what not. For instance, the Namadheya, *Shyenena Yajeta*, explains that *Sheyna Yaga* is a *Yaga* for doing mischief to others, and therefore, that *Yaga* cannot be the subject of an Utpatti Vidhi or of any Vidhi. Thus Namadheya illucidates the *Pradhana Chodana* tending to show what things are unfit to be embraced in it, and what are fit to be so embraced.

Namadheya
discussed.

Again, Jaimini subdivides the Vidhi texts from various points of view. The main classifications are : (1) with regard to the degree of obligatory force, and (2) with regard to their nature and purpose. I shall first consider that classification of them which has reference to the degree of obligatory force contained in them. The Sutras indicate three classes of Vidhis from this point of view, viz., *Vidhi proper*, *Niyama*, and *Pari-sankhya*. This classification contemplates only positive injunctions, and not prohibitions. And I have already explained to you that the sanction of a positive injunction is mainly the unattainable character of benefit to be received by complying with it. So the degree of the obligatory force of such a Vidhi varies accordingly as the benefit to be received is wholly unattainable by other means or partly so unattainable. When the promised

Jaimini's
classification
of Vidhi
texts :
I According
to the degree
of obligatory
force.

benefit is exclusively attainable by complying with the Vidhi, and unattainable by other means, the Vidhi is perfect and absolute. When it is partly attainable by complying with the Vidhi and partly by other means, the Vidhi is imperfect and not absolute. When again the benefit can easily be had in its entirety by ordinary means, though also attainable by following the Vidhi, then the Vidhi is a mere recital or statement of the benefit without any real obligatory force. Accordingly Kumarila Bhatta differentiates them by the well-known Sloka which may be translated as follows :—

“A Vidhi tends to secure what is otherwise at all not attainable.”

“A Niyama tends to secure what is partially otherwise attainable.”

Vidhi, Niyama and Parisankhya.

“A Parisankhya consists in a statement or recital as to a benefit which is commonly attainable in its entirety either by acting according to the statement or by other means.”

To express the effect of the above in our modern law language.

1. A Vidhi is a perfect (imperative) command.
2. A Niyama is an imperfect (directory) rule.
3. A Parisankhya is a monitory precept.

A Vidhi supplies an urgent necessity and may be taken that the form “You shall do it” is appropriate for it. A Niyama is not so urgent and it be taken that the form “you shall do it unless there be a good reason to the contrary,” is the proper form for it. A Parisankhya is hardly required as a rule of law, and it may be taken that the form “you may do it” is the proper form for it.

The above distinction will be clear from the

examples which the Mimāṃsa writers give of Niyama and Parisankhya.

“Take a goodly meal after the fasting of the eleventh day of the moon.”¹ This is a Niyama. It evidently implies that the meal is to be taken unless one has any good reason for abstaining from it.

“The flesh of animals whose feet are divided into five nails is eatable.”² This is an example of Parisankhya. This means you *may* eat the flesh of such animals, and not that you *shall* eat it. You may eat it, as the eating of the flesh of such animals is warranted by some other Shastras, probably such as relate to Hygienic considerations.

Some later writers maintain that a Parisankhya is meant to prohibit all that is not permitted by it. They would thus take it as an implied prohibitory Vidhi. But this view is not warrantable, and has been refuted by such an authoritative commentator as Savara with whom Kumarila Bhatta agrees. Jaimini himself does not countenance this view. He puts Parisankhya as a matter of Arthavada.³ In fact, strictly speaking Parisankhya is not a Vidhi. But this discussion is out of place here; and will be dealt with more fully hereafter.

The distinction made by the Sutas among the three classes of Vidhi texts is surely not foreign to the civil law in which it is of constant need to discuss, whether the operative word of a text is to be read as *shall* or *may*.

Vedic and modern ideas on the subject discussed.

1 द्वादशीं पारयेत् ।

2 पञ्च पञ्चनखाः सत्याः ।

3 परितोष्या चर्षवादी वा । Jaimini I. ii. 42 & 43.

It may be said that the above gradation of obligatory force is made with reference to the consideration of the sanction of benefit which is a fanciful thing, and that, therefore, the above distinction between Vidhi and Niyama &c. is of no use to the civil law. But the sanction of loss of benefit is not a fanciful sanction. Notwithstanding what Mr. Austin says, practically in many matters, our modern laws make rules of law rest on the sanction of loss of benefit. For instance, the law of limitation has for its sanction the loss of a right which a man possesses. If he does not sue within a certain time, he loses the benefit of his right. So also, the law of compulsory registration is based upon the sanction of loss of benefit. If a man does not get registered a document required to be registered, he loses the benefit of the document. In these cases there is no sanction of positive punishment. The punishment is indirect consisting in the loss of benefit.

In the above two cases viz., of the law of limitation and registration, the sanction consisting of the loss of benefit is complete. Take now the case of the stamp law. In this the sanction is not so complete. It is partial. If a man has failed to pay the required stamp duty, except in one case, he does not absolutely lose the benefit of the document, but on paying a certain pecuniary penalty, he may retain the benefit of it. Here the force of the Vidhi is comparatively weaker. Therefore to measure the obligatory force of a Vidhi by the degree of the loss of benefit incurred, by not complying with it, is not open to objection.

Then again, our modern law books exhibit the distinction between the substantive law and the adjective

law. The adjective law, again, is subdivided into the rules which essentially affect the obligations imposed by the substantive law and mere rules of procedure. Between the substantive law and the adjective law, there is another class of rules regarding personal qualifications and competency ; for instance, as to who is competent to contract.

The Sutras indicate similar distinctions. These distinctions have been systematically put by later writers ; and among others, by Lougakshi Bhâskara and Apâdeva in particular. They classify Vidhi texts into —

2. Accord-
ing to the
purpose.

- (1) *Utpatti Vidhis* (Substantive obligatory rules).
- (2) *Viniyoga Vidhis* (applicatory rules).
- (3) *Adhikara Vidhis* (rules laying down personal qualifications and personal competency).
- (4) *Prayoga Vidhis* (rules of procedure).

Now a few words are necessary to explain to you each of the aforesaid four classes of Vidhis in comparison with the corresponding classes of laws obtaining in our modern law books.

As regards the first class, the Utpatti Vidhis of the Vedas, they are called Utpatti (originating), because they are the basis of obtaining the main object of the Vedas, salvation or heavenly bliss. This object is transcendently high. In the civil law the acquisition of a civil right stands in the same position. Therefore, in the civil law, the Vidhis that originate a right correspond to the Vedic Utpatti Vidhis.

Utpatti
Vidhis.

In the Vedic law, the Vidhis commanding the performance of the *Agnihotra Yâga*¹ and *Darsa Pournamasi Yâga*² are Utpatti Vidhis. They are substantive Vedic

1 स्मृतकानो ऋषिर्होत्रं कुर्यात् ।

2 स्मृतकानो दर्शपौर्णमासाभ्यां यजेत ।

laws of the highest order viz., relating to the salvation of man.

But there are other Vedic Vidhis which, though they do not rank so high, are also substantive laws (Utpatti Vidhis), such as :

“ Never tell an untruth.”¹

“ Never hurt anyone.”²

You should know that in all Utpatti Vidhis there is a common element viz, “Swargakâmo Yajeta” (sacrifice for heaven, the word heaven, meaning according to the Mimânsakâs, heavenly bliss and not any local heaven). This is expressly found in the two commands referred to regarding the performance of the Agnihotra and the Darsa Pournamasi. It is to be implied in the two Vidhis just mentioned, viz., “ Never tell an untruth,” “ Never hurt any one ”. In these the word Swargakâma is to be read into.

In fact this common element of all Vedic Utpatti Vidhis is called the primary command (Pradhâna Chodanâ). It is independent of material objects, and has nothing to do with the fire sacrifice or the full moon sacrifice. It is defined to be “ the command with which material things are not mixed up.” In fact, the prime command is to ensure purely ideal or spiritual worship (Bhâvârtha). It has nothing to do with ceremonial worship. The ceremonial worship is the tangible expression of it and is called ‘shesha’ (the accessory of the primary command).

The obligation imposed by the primary command is an ideal duty of prayer and sacrifice. But this ideal

1 नास्त्यम् वदेत् ।

2 न हिंसेत् ।

act cannot stop there. It demonstrates itself externally by some overt act. This overt act is *Karma* (sacrificial ceremony.)¹ It is also accompanied by verbal acts in the shape of chanting hymns and singing songs in connection with sacrificial ceremony.² Thus the command to pray and sacrifice for the highest state of man, is to be realised mentally, to be imposed by songs and hymns, and to be made tangible by external physical acts.

Karma in relation to primary command.

The realisation by verses is the chief feature of the Rik Veda.³

That by songs and hymns is the chief feature of the Sama Veda⁴.

That by other means is the chief feature of the Yajur Veda⁵.

It may be said that a discussion on the *Swargakamo Yajeta* is frivolous, specially in a course of lectures on interpretation of law. I have, however, dwelt on the topic for two reasons. The first reason is, you cannot expect to follow the Jaimini Sutras without understanding it. The second reason is yet more important. You constantly hear that the Hindu Law is based on considerations of spiritual benefit. But a clear explanation of this is seldom met with. From the above analysis of the Mimamsa Jurisprudence, according to which the prime command, 'pray and sacrifice for the highest spiritual state', is the source of all rules of the Hindu Law, you

1 कर्माद्यपि जैमिनिः, फलार्थत्वात् । Jaimini III. i. 4.

2 तद्योदकेषु मन्त्राख्या । Jaimini II. i. 32.

3 तेषामग्यनार्थवशेन पदव्यवस्था । Jaimini II. i. 35.

4 गीतिषु सामाख्या । Jaimini II. i. 36.

5 श्रेष्ठे यजुः शब्दः । Jaimini II. i. 37.

have an explanation of the theory of spiritual benefit. Spiritual benefit is to be sought not because it is a benefit but because it is commanded. It is true the Smṛiti Vidhis are not preceded by the formula *Swargakamo yajeta*. But in order to make a Smṛiti Vidhi valid, it must be capable of having this formula read into it. For, it must be capable of having the semblance of a Vedic Vidhi¹. This is at least the theory.

To resume the second classification of the Vidhi texts. The sub-class 'Vinīyoga Vidhis' (applicatory rules) and the sub-class 'Prayoga Vidhis' (rules of procedure) are both included in what is called *Guṇa Vidhi* (adjective law). The former are of an essential character forming, as it were, part and parcel of the Utpatti Vidhi (rule of substantive law), and the latter of an incidental character, being mere rules of procedure. The former provide the means with which an Utpatti Vidhi is to be given effect to, the latter point out the way in which it is to be carried out.

Viniyoga
Vidhis,
Prayoga
Vidhis &c.,
are
accessories
to Utpatti
Vidhis
which again
are accessor-
ies to
pradhana
chodana.

As the karma (ceremonial act) of an Utpatti Vidhi is the Shesha (accessory) to the prime command *Swargakamo Yajeta*, so the processes of Vinīyoga Vidhis and Prayoga Vidhis, being means and ways to the karma of the Utpatti Vidhis, may be regarded as the Shesha of that Karma². These two subdivisions as well as the Adhikara Vidhis (rules regarding personal qualifications) are mostly found in the Brahmanas as distinguished from the Samhitas of the Vedas. So the term Shesha is also applied to the Brahmanas.

In fact as an Utpatti Vidhi text (i. e. text regarding ceremonial worship) is a shesha (accessory) to the

¹ सान्नायवृत्तिकलनाधिकरणम् । Jaimini I. iii. Adhi. 8.

² Vide.—Madhavacharya's Jaiminiya Nyayamala Vistara. Bk. III. Ch. I. Adhi. 3.

Pradhâna Chodanâ (text regarding ideal worship), so a Viniyoga Vidhi or a Prayoga Vidhi is a Shesha (accessory) to the Utpatti Vidhi. The word Shesha is a relative term, meaning subordinate or accessory. Therefore, the word Shesha is applied to all applicatory Vidhis, and it is also applied to the Brâhmana section of the Vedas in which applicatory Vidhis and Prayoga Vidhis are mostly found.

Viniyoga
Vidhis and
Prayoga
Vidhis ex-
plained.

An example of a Viniyoga Vidhi is 'By curdled milk perform the Agnihotra.' This simply indicates the way in which the Agnihotra is to be performed; the performance itself being commanded by the Utpatti Vidhi already referred to.

Rules regarding the order (Niyama) in which the different parts of a transaction should be performed are examples of the Prayoga Vidhi. These rules are of the same nature as our rules of procedure.

The rules and principles of interpretation are mostly laid down with regard to applicatory Vidhi texts. In fact, the Utpatti Vidhis are but few, and they are short and simple, and, as such, stand in little need of interpretation. Accordingly, we find that the most important rules of interpretation are given in the third book of Jaimini, which deals with the subject of Shesha (which chiefly consists of Viniyoga Vidhis). Lougâkshi Bhâshkara and Apadeva also treat of the six principles of interpretation in connection with the Viniyoga Vidhis. They are Sruti (the literal principle), Linga (the principle of context), Vâkya (the principle of syntactical arrangement), Prakarana (the principle of part and whole), Krama (the principle of succession) and Samâkhyâ (the principle of etymological implication).

Adhikāra
Vidhis,

Now as regards the sub-class 'the Adhikāra Vidhis' (rules regarding personal competency). This subject is treated in the sixth book of the Sūtras. It includes not only rules as to who are competent to avail of the Vedic law, but also rules as to how the shortcomings and failures of those who are so competent are to be dealt with. As regards competency, women are entitled to join in the performance of Vedic duties, and even the Sudras are not absolutely shut out from them, though they are generally not competent to perform the Agneya sacrifices. The Adhikāra Vidhis of the Vedas correspond to such rules of our modern law as settle the competency of persons to contract or to do things of a like nature.

Scope of the
Vedic
Vidhis.

From what has been said regarding the Vidhi texts, one may notice that the Vedic substantive Vidhi, as distinguished from Niyama, or from the applicatory and other adjective Vidhis, has for its object the invisible and the transcendental benefit *viz.*, heavenly bliss. It does not aim at visible objects, nor does it embrace worldly benefits to which the ordinary natural instincts of men incline. If the range of substantive Vedic Vidhis stopped here, the subject matter of the positive civil law of Hindu nation would be wholly outside the scope of the Vedas—the scriptural law. Nevertheless, it has been seen that the positive law of the Smritis dealing with visible objects and regulating the natural inclinations of men, is presumed to be parts of the Vedic law. How can such a presumption be proper if such matters be foreign, nay, repugnant, to the scope of the Vedas?

The above question has proved a stumbling-block to some students of the Hindu Law. The question, however, does not really arise, if the range of the Vedic law be

rightly ascertained. The Utpatti Vidhis dealing with the invisible and the transcendental are not the only substantive Vidhis of the Vedas. There is another class of Vidhis called *Naimittika* (occasional) or *Kāmya* (ordinarily desirable) occurring in the Vedas and recognised by Jaimini. These deal with visible and ordinarily desirable worldly matters. Jaimini harmonises them with the command to seek heavenly bliss, in other words, with the primary Utpatti Vidhi, either as being the means to it, or as being conjoined with it.¹ Although in the *Naimittika* or *Kāmya* Vidhis some worldly benefit is mentioned, but this, according to Jaimini, is stated merely as a result and not as the aim. Jaimini points out the subordinate character of visible and worldly matters in the following Sūtras :

They include visible and worldly matters.

“Because materials, the operations performed upon them, and subordinate acts are subservient to something else, the description of a benefit in connection with any of them is an *Arthavāda*.”²

“What is laid down as occasional is not principal, being derivative; the principal in the shape of religious obligation is different.”³

The commentators of the Sūtras in connection with Sūtras 10 to 16, ch. iii. Bk IV., take the case of a Yāga, as *Viswajit*, in which there is no mention about the object of the sacrifice. They say that the object is to be presumed as being *Swarga* or heavenly bliss.

1 कामो वा तत्सुखाग्रेनचोद्यते । Jaimini IV. iii. 22.

2 द्रव्यसंस्कारकर्म्मसु परार्थत्वात् फलश्रुतिरर्थवादः स्यात् ।

Jaimini IV. iii. 1.

3 नैमित्तिके विकारत्वात् क्रतुप्रधानमन्यत् स्यात् । Jaimini IV. iii. 4.

Thus there are Vedic Vidhis like the Smṛiti Vidhis dealing with visible objects and matters of ordinary inclination, though theoretically joined with the transcendental sanction.

Further division into Purushārtha and Kratwartha Vidhis.

The Mimāṃsā Sūtras make another division of the Vedic Law, *viz.*, the Vedic law relating to individual culture (*Purushārtha* Vidhis), and the Vedic law relating to the duties of a man as a member of the Vedic community (*Kratwartha* Vidhis). The latter are of a positively obligatory character, while the former are of the nature of religious precepts.

No doubt you have heard of instances of discussion in our present time as to whether a text is to be construed as a positive command of law or as a mere moral precept. From the above you see that this kind of discussion is not new. It was an old discussion which Rishi Jaimini, the venerable father of Hindu Jurisprudence, took cognisance of and dealt with.

According to Austin that only is a perfect positive law the sanction of which is enforceable by a determinate body of persons having authority to enforce it. In the case of the Purushārtha Vidhis (*i. e.*, the Utpatti Vidhis, such as, 'Agnihotram Juhuât'), there is no determinate body to enforce them. But what are called the Kratu Vidhis, *viz.*, Vidhis which regulate the details of a Vedic sacrifice, there is, in a certain sense, a determinate body of persons by whom these are enforced. They are the assembly of priests who are present at the sacrifice. Thus, the Kratwartha Vidhis approach a degree nearer to our positive civil law than the Purushārtha Vidhis. Accordingly, the Mimāṃsakās exhibit the distinction between the two classes of Vidhis.

They also point out the difference between an *Arthakarma* and a *Pratipattikarma*. An *Arthakarma* is a duty imposed by a *Kratwartha Vidhi*, while a *Pratipattikarma* is a duty imposed only incidentally with reference to an *Arthakarma* already done. The distinction between a *Purushârtha Vidhi* and a *Kratwartha Vidhi* and that between an *Arthakarma* and a *Pratipattikarma* are really distinctions between matters which are fully obligatory and those which are of a quasi-obligatory character. The former distinction is taken notice of in the first eight *Adhikaranas* of Ch. III. Bk. IV., specially in the 8th *Adhikarana*¹. The latter distinction is clearly made out by Ch. IV. Bk. II., specially by *Sutras* 10 to 22. In these *Sutras*, the author shows what is a *Pratipattikarma* (an incidental matter) as contra-distinguished from what is essentially connected with the sacrificial ceremony.

*Arthakarma
and Prati-
pattikarma.*

I need not dilate upon this topic here as I shall have to refer to it more fully hereafter. It is enough here to indicate how *Jaimini* makes the distinction between a positive rule of law and a rule of conscience. Of course, his positive law is mainly religious; while, according to our modern ideas, nothing of the religious law can be regarded as positive. But, according to the old Hindu Jurisprudence a part of it is positive.

In fact, there are the *Purushârtha Vidhis* and the *Kratwartha Vidhis* which are of two kinds, *viz.*, those which are not connected with worldly desires and are called *Nitya*, and those which are connected with worldly desires and are called *Naimittika* or *Kamyâ*; and again

*Nitya and
Naimittika.*

¹ सुवर्णधारणादीनां पुरुषधर्माधिकरणम् ।

Evolution of
Smṛiti Law
from the
Vedic Law.

the Naimittika Vidhis are more or less tangibly connected with worldly desires and duties, the most tangibly connected being the Vidhi regarding the three debts which form the ground-work of the Smritis. If you consider all these connectedly, you see that our positive civil law contained in the Vyavahāra Kānda of the Smritis, has come into existence by a process of evolution from the Vedic law. From the Purushārtha Vidhis *i. e.*, the purely spiritual laws, which are wanting in positive features, we descend to the Kratvartha laws which have essential features of the positive civil law. Then from Kratvartha Vidhis which are mainly directed to invisible objects, we come to those Kratu Vidhis called Kāmya, such as, the *Pitri Yagas* or *Pitri Śraddhas* and the *Putresthi Yagas* which approach a degree nearer to our positive laws of family status and family property. Then lastly we come to the three debts command which form the ground-work of the Smṛiti law of status and property.

Anārabhya-
dhita Vidhi.

The Mimāṃsā writers make another classification of Vidhis as follows : The Chodanā (command) is usually understood to be an injunction to do some particular act. But sometimes a chodanā may fix a principle without reference to any specific act. Such a chodanā is called an *Anarabhyadhita* Vidhi. Dr. Thibaut in his translation of the Artha Samgraha by Laugākshi Bhāṣkara explains an Anarabhyadhita Vidhi to be " a rule which stands by itself, out of connection with some particular sacrifice to which it might be referred, so that it must be considered as a general rule." In the smṛiti law many of the Vidhis would come under this category.

The last and not the least important is the division

of Negative Vidhis or prohibitions into *Pratishedha* and *Paryudāsa*. A *Pratishedha* is a general and absolute prohibition, while a *Paryudāsa* is a qualified exceptional prohibition.¹

Pratishedha
and *Paryu-*
dāsa.

When against a positive text there is a *Pratishedha* text, it becomes a case of conflict. When such a conflict occurs, both the texts lose their virtue as Vidhis, and become texts which may be accepted or rejected at option.² This is called *Vikalpa* or a matter of option. But a conflict should not be assumed so long as the texts may be reconciled by any reasonable means.

Vikalpa.

A positive Vidhi and a *Paryudāsa* attached to it are not inconsistent with one another. A *Paryudāsa* is, in fact, an exceptional clause or a proviso.

By the way I ought to mention to you here another division of Vidhi and *Pratishedha* which has reference to the materials which evidence the Vidhi or the *Pratishedha*. This division is that into *Pratyakshya* (express) and *Kalpya* (implied). A *Pratyakshya* Vidhi is embodied in an express text, while a *Kalpya* Vidhi is made out constructively by such means as *Linga*, *Vākya* and *Prakarana*. The same is the case with two kinds of *Pratishedha*.

Pratyakshya
and *Kalpya*.

There is another important topic without which an analysis of the *Mīmāṃsā* Jurisprudence will be incomplete. This is the topic called *Shabdibhāvana* and *Arthibhāvana*.

1 प्रदेशानारब्धविधानयोर्निषेधस्य पर्युदासत्वम् । Jaimini X. viii.

Adhi. 1.

2 जातिरात्रे षोडशिनमिति निषेधस्य विकल्परूपत्वम् । Jaimini X. viii.

Adhi. 3.

See also Raghunandana's *Māhātātva* pp. 803-810.
Jibananda Vidyasagara's Edition.

Shābdi-Bhā-
vana and
Arthi-Bhā-
vana.

It means realising the primary command *Swarga Kamo Yajeta* doubly; first, by directing attention to the force of the command and secondly to the assurance of benefit to be derived from fulfilling it. Later Mimāṃsā writers, such as, Vhāshkara and Apadeva, begin with this topic. But it may be asked what is the use of such a topic to a student of law? The following explanation will show its usefulness:

Writers on the interpretation of statute law admit the necessity of enquiring into the object and reason of a statute in interpreting passages, the meaning of which cannot be satisfactorily determined either by the principle of literal construction or by the principle of construction by context. When such occasion arises, the modern lawyer would enquire, what is the evil which the statute was passed to remedy or what good it intended to secure? They determine this, and then use it as the test in ascertaining the meaning of an obscure or seemingly unreasonable passage.

I have already explained to you that the command *Swarga Kamo Yajeta* is the keynote of the whole of the Vedic law. It may be called the object and reason, if such profane language be permitted, of the Divine Eternal Legislation. Therefore, the Mimāṃsā writers would always have in view this keynote of the Vedic law. Their object is to ascertain duty (Dharma) spiritually. So they insist that the student should realize the meaning of this fundamental command at every step, from the double point of view, as an imperative command and as an assurance of supreme spiritual benefit, laying stress in the one case on the verb *Yajeta* (pray and sacrifice), and in the other case on the noun *Swargakama* (the

seeking of heavenly bliss). When this is done, the student can ascertain whether a text is a proper Vidhi text, by examining whether it stands the test of the double Bhâbanâ as stated above. Thus, in the case of the text "By Syena ceremony practise mischief to enemy", the Mimânsâ writers make out that this is not a Vidhi, but a mere description (Nâmadheya), because it does not stand the test of the Artha-Bhâbanâ (realisation of heavenly bliss). I think I have sufficiently made it clear to you that the method of treatment followed by Jaimini and other Mimânsâ writers is similar to the method followed by civil jurists.

Section III.—Application of Mimânsâ Rules to the Positive Smṛiti Law.

Generally speaking, the commentators of the Mimânsâ Sūtras were not lawyers. They were naturally bent on showing the application of the Sūtras to the solution of difficulties presented by the sacred law—the Vedas. Therefore, their works have the appearance of religious or theological treatises. But the rules and principles of interpretation laid down in the Sūtras are like the rules of grammar. As the rules of grammar when applied to a poetical work do not lose their force as regards a work in prose, so the rules of interpretation applied to the Vedas would not become valueless in applying them to questions of civil law. In fact, as already stated, they have a double phase. However, to give you an idea of the questions arising from the sacred law to which the commentators address themselves, the following passage from Thibaut's Introduction¹ to the translation of the Artha Samgraha may be useful:

Commentators' discussion more theological than judicial.

1. Pages IV.-V.

Nature of
these discus-
sions illus-
trated.

"The fact that throughout the Mantras accompanying a certain sacrifice are combined in separate sections apart from those chapters which contain the corresponding Brâhmana is in itself a source of frequent perplexity. Again it often happens that there is an apparent contradiction between two passages referring to the same matter as when, for instance, the Brahmana-passage maintains that from out a series of sacrificial acts a certain one is to be performed in the sixth place, while in the section which contains the Mantras accompanying the series of acts the Mantra referring to the particular act mentioned occupies the tenth place.—Or again we find that, of two actions referring to the same thing, the one which according to the exigencies of the case must be performed in the second place is in the sacred text enjoined before the other one.—Or again the reader of the Veda may be in doubt to whom a certain injunction contained in the Veda is addressed, what kind of man, in other words, is entitled to perform the sacrifice enjoined and in return to expect the result promised in the Veda.—Or again we meet in the Veda with passages regarding which a *prima facie* doubt arises whether they enjoin an independent sacrifice to be performed from a special motive and attended by a special result or perhaps merely a subordinate sacrificial act which contributes its limited share towards the successful performance of one of the well-known great sacrifices.—Or again—and this must have been a point whose consideration very frequently pressed itself on the Brâhmins at a time when the various sacrifices mentioned in the Veda were in reality regularly performed—it becomes a matter for reflection and doubt in what manner one has to perform

the very numerous so-called *Vikritis i. e.*, the sacrifices which are mere modifications of the few typical sacrifices and which as such the Veda does not describe in detail. —It would be useless here to continue the enumeration of difficult cases of this nature."

But if the commentators mostly discuss how to construe and apply texts of the Vedas, texts which to a lawyer are not interesting, if not positively repulsive, the great Hindu lawyers, such as, Medhâtithi, the great commentator of Manu, Aparârka or Aparâdillya, the celebrated commentator of Yâjñavalkya, Vijnânesvara, the author of the *Mitâksharâ*, Jimutavâhana, the author of the *Dayabhâga*, Nilkantha, the author of *Vyavahâra Mayukha*, Nanda Pundit, the author of *Dattaka Mimânsâ* as well as a commentator of the *Vishnu Smṛiti*, Devanna Bhatta—whoever he may be—the author of the *Dattaka Chandrikâ*, Raghu Nandana, the author of *Smṛititattva*, all appeal to the principles and rules of the *Mimânsâ Shâstra* in dealing with their subjects. These rules they regard as authoritative in settling disputed and controverted points and in supporting their conclusions. The way in which they apply the *Mimânsâ* maxims illustrate how those maxims, though directed to construe the Vedic texts, fully apply to the texts of law contained in the *Smṛitis*.

Distinguish-
ed Hindu
lawyers' ju-
dicial appli-
cation of
Mimânsâ.

I shall have to deal with all such instances in detail hereafter. Here I may tell you simply that Vijnanesvara, the author of the *Mitâksharâ*, founds the distinctive and fundamental principle of his work, *viz.*, the principle that property is temporal, on the basis of Jaimini's *Sutras*.

Vijnâne-
svara.

Jimutavā-
hana.

Then, again, you will see in due course how Jimutavāhana, the author of the *Dayabhāga*, resorts to the *Mimāṃsā* principles in connection with the fundamental doctrine of his work, regarding the absolute disposing power of the father or a coparcener over property possessed by him.

Nīlkantha.

Nīlkantha, the author of the *Vyavahāra Mayukha*, also appeals to *Mimāṃsā* with respect to one of the most important questions of his book. In discussing the question whether the king has any right of property in the lands forming his territory, Nīlkantha strongly holds that he has none on the basis of the *Sarvadaśhindā* maxim of *Mimāṃsā*. Regarding the authority of the *Mimāṃsā Sūtras*, the way in which he mentions the *Pūrva Mimāṃsā* in his preface testifies to it unmistakably. He says that king Bhagavanta charged him to write the work as he was "firmly grounded in the *Smritis* and had no equal in *Pūrva Mimāṃsā*."

Medhātithi.

Then, again, Medhātithi's commentary of *Manu*, which is justly regarded by Mr. Jolly and others as having been one of the principal agents in developing the jurisprudence of India, 'abounds,' as Mr. Jolly says, 'more than any other law-book in *Mimāṃsā* terms and dissertations.'¹

Kulluka.

Then Kulluka, the well-known commentator of *Manu*, whose work is characterised by Sir W. Jones as the "shortest, yet the most luminous, the deepest, yet the most agreeable commentary ever composed by any author, ancient or modern, European or Asiatic," deprecates the attempt of interpreting the sacred text, in the light of the iconoclastic reasonings of the Buddhists and

¹ Jolly's *Tagore Law Lectures 1883*, page 8.

the like, and says that the approved method of interpretation is to follow the Mimāṃsā principles. There is a passage in Mahābhārata:

"The Purāṇas, Mānava Dharma, the Vedas with Angas and the Medical Science, these four are established by the authority of command and are not to be upset by the authority of reasoning.¹

With regard to the meaning of this passage Kulluka observes: 'The meaning of these should not be upset by the iconoclastic reasoning of Bauddhas and the like, but that the method of reasoning according to the Mimāṃsā Shāstra should be followed as the approved method'.²

Raghu Nandana's works on the Smṛititattva are full of references to the Mimāṃsā rules, such as, Ekādashitattva, Malamāsatattva, Suddhitattva, Udvāhatattva, &c.

Raghu
Nandana.

Going back to ancient times we find that Apastamba and Bauddhāyana both follow the Mimāṃsā principles on several occasions, for instance, in deciding the question whether the eldest son should get a larger share of the inheritance, which was a question on which they differed and on which they both referred to the same Sruti. Vāśiṣṭha and Yājñavalkya also mention the Mimāṃsā.

Apastamba
Bauddhāyana
&c.

Before giving you a general idea of what the Mimāṃsā principles of interpretation are, I should tell you what the process is by which those principles are established.

१ पुराणं मानवी धर्मः साङ्गोद्दीर्घकृतस्ततः ।

आज्ञासिद्धानि चत्वारि न ह तव्यानि हेतुभिः ॥

२ विरोधि बौद्धादितर्केन ह तव्यानि, अनुकूलस्तु मीमांसादितर्कः प्रवर्तनीय एव ।

The process
of Adhi-
karana.

The Mimāṃsā process of establishing principles of interpretation is called an *Adhikarana*. It consists of five steps, as shortly described in the following Sūtra by Kumārila Bhaṭṭa :

“The text under consideration, the doubt concerning it, the first side, the other side or answer and the conclusion, all these constitute an *Adhikarana* (a complete theme.)”

Colebrooke explains an *Adhikarana*² as follows :—
A complete *Adhikarana* or case, consists of five members, *viz.* :

- I. The subject or matter to be explained.
- II. The doubt or question arising out of that matter.
- III. The first side or *prima facie* argument concerning it.
- IV. The answer or demonstrated conclusion (*Siddhānta*).
- V. The pertinence or relevancy.

This process of interpretation is unobjectionable. It gives a prominent place to the view opposed to what is eventually adopted by way of conclusion, which by this method acquires a greater clearness and strength than otherwise would have been the case. This mode of argumentation, consisting of *Purvapaksha* or *prima facie* argument, the *Uttara* or the refutation of it, and then the *Siddhānta* or conclusion, is peculiar to the Hindu literature. It pervades all Sanskrit discursive works. The system of *Adhikarana* has been followed in *Uttara Mimāṃsā* or *Vedānta*. An *Adhikarana* is also called a *Nyaya*.

२ विषयी विषयश्चैव पूर्वपक्षस्तथोत्तरम् ।

निर्णयश्चेति पक्षाङ्गं शास्त्रेऽधिकरणं कृतम् ॥

२ Colebrooke's Miscellaneous Essays, p. 326.

Dr. Buhler thinks that formerly Purva Mimāṃsā was called by the name of Nyāya, and that latterly it was applied to the Gautama system of logic. You have seen that the logic of Mimāṃsā is the logic of law, as Colebrooke has put it. Thus there is no wonder that the same word Nyāya is applied to a legal thesis, as to a thesis of formal logic. In both cases an Adhikarana consists of five parts. You have seen the parts which constitute a Mimāṃsā Adhikarana. According to Gautama logic, a syllogism also consists of five members. There is, however, this great difference that in logic the conclusion is arrived at, firstly, by affirming a general proposition of fact, and then showing that the particular proposition in question is covered by that general proposition. But in a Mimāṃsā Nyāya the basis of solution is either the authority of the Sruti or of principles enunciated in the Smṛiti, which are not inconsistent with the Sruti or the authority of Shīstāchāra (*i. e.*, usages prevailing among good men). It would be seen that arguments resorted to in courts of law are based on similar grounds. And as in a court of justice when the judge comes to a decision on a point of law from premises partaking of the nature of law, custom, etc., his decision becomes a settled principle of interpretation, when a similar question arises; so the Siddhānta arrived at by Jaimini in each Adhikarana of his book upon the particular question raised in that Adhikarana, furnishes the method of interpretation, which would apply to all questions of a similar character, although the subject-matter in relation to which the conclusion is arrived at, may be different from that in connection with which the new, similar questions may arise.

Adhikarana
identical
with Nyaya.

Many of the *Mīmāṃsā* Nyāyas have got proper names given to them. They are usually named after some word or phrase occurring in the *Bishaya* or subject matter of the *Adhikarana* or the *Purvapaksha* of the particular case with which the principle of the Nyāya originated, just as, many leading principles of judicial decision go by the names of the parties to the case in which the decision was passed.

Now, having understood what an *Adhikarana* or Nyāya is you will be able to appreciate such names of some of the *Mīmāṃsā* books as *Nyāya-Ratna-Mālā*, *Nyayâvali-Didhiti*, *Nyāya-Mālā-Vistâra*, etc.

Mr. Gopalachariar, M. A. B. L., of Madras makes the following apt remarks regarding the *Mīmāṃsā* Nyāyas:

Mīmāṃsā
Nyāyas
superior to
those of
grammar
and logic.

"The rules (Nyāyas) laid down by Jaimini have been implicitly accepted by writers of all schools. The controversial literature of the several Vedânta schools is mainly based upon these Nyāyas. This may be verified by a reference to the *Nyâyâmrita* Advaitasiddhi, *Tarangini*, *Brahmanandeeya*, *Vānamālāmīsiya*, *Sarvârthasiddhi* and other works. The *Mīmāṃsā* Nyāyas are largely quoted in works on grammar, such as, the *Manjushâ* and *Sabdakaustubha*. The Nyāyas of Tarka and *Vyâkarana* are not considered to be of universal application like those of the *Mīmāṃsā*. The Tarka Nyāyas are often rejected by writers of other schools. The *Vyâkarana* Nyāyas are very rarely admitted to be of application outside the science of grammar."

1 *Brahmavâdin* Vol. i. p. 659.

Section IV. A brief analysis of the Mimāṃsā principles of interpretation.

I now proceed to indicate briefly the principles and rules of interpretation which form the main subject of my lectures. A brief analysis of the subject.

The subject of interpretation involves two questions:

- (1) *What is the meaning and intention of a particular word, sentence or passage ?*
- (2) *Whether it constitutes an obligatory rule of any kind, or a quasi-obligatory rule or a non-obligatory matter?*

Principles and rules of interpretation are meant to help the solution of the above questions in particular cases.

Now as regards the Hindu Law, what are the sources which contain these rules and principles of interpretation ?

The Vedas, in connection with which these rules and principles have been developed, themselves contain very little of them.

Occasionally, however, the Vedas indicate the germs of the Mimāṃsā principles. As for example, in Kānda I, Prapātaka 5, Anuvāka 99 of the Taittiriya Samhitā, occurs a passage of which the following is a free rendering:—"Is it or is it not proper to recite the prayer to Fire (Upasthāna Mantra) at the end of morning and evening Agnihotras? The opponent (Purvapakshin) says 'no', and gives reasons for his view. Men, if they are daily visited and begged of, become angry. To

Germs of
Mimāṃsā in
the Vedas.

give a thing of trifling value, such as, a fruit, and ask for immense gold in return must necessarily annoy the person begged. If you give a little *Havis* and ask for the best things in exchange, you are sure to offend Agni. The Vaidika Siddhântin gives an affirmative answer to the same question. One offers oblations for the purpose of wishing oneself every good. The Upasthâna Mantras are no more than an expression of one's wish for good to oneself. It is a mistake to say that the *Havis* is small. It increases immensely by the force of the Mantra. Looking at the business purely from a business point of view, the sacrificer gives an adequate consideration for what he asks. Upasthâna may therefore be made."

Mimansa
principles
in Dharma
Sutras.

The Dharma Sutras of Gautama and Apastamba indeed mention two or three Mimânsâ principles, but hardly of any great value. For example, they lay down (1) Smṛiti or practice (Achâra) is no authority when it is in direct conflict with a Sruti; (2) where contradictory methods of performing the same acts are prescribed by authorities of equal force, you may adopt either optionally; (3) Kalpa Sutras are not Vedas but only their Angas. These principles are respectively the subjects of the *Smṛityâdhikarâna*, *Vikalpâdhikarâna* and *Kalpâsutrâdhikarâna* of the Mimânsâ.

Principles of
interpretation
in
Smṛiti.

The Smṛitis contain a few rules, but they are very meagre and chiefly relate to cases of conflict such as the following:

"When two Smṛitis disagree, that which follows equity as practised by the people of old should prevail. Smṛiti is of greater authority than rules of Artha Shâstra" (the meaning of which, as will be explained here-

after, is practically equitable principles based on rules of morality and prudence).¹

"Avoiding carefully the violation of either the sacred law or the rules of Artha Shâstra, he should conduct the trial attentively and skilfully."²

"Where the rules of sacred law and the rules of Artha Shâstra are at variance, he must discard the latter and follow the rules of sacred law."

"In case of conflict of Smritis decision should be based on reason. Custom is powerful and overrules the sacred law."⁴

"The first rank (among legislators) belongs to Manu, because he has embodied the essence of the Veda in his work; that Smriti (or text of law) which is opposed to the tenor of the laws of Manu is not approved."⁵

"Decision should not be based only on the Shâstras. By an unreasonable judgment there is loss of Dharma."⁶

1 युक्त्योर्विरोधे न्यायस्तु बलवान् व्यवहारतः ।

अर्थशास्त्रात् बलवद्वर्माशास्त्रमिति स्थितिः ॥

Yajnavalkya Ch. ii. 21.

2 धर्मशास्त्रार्थशास्त्राभ्यामविरोधेन यद्वतः ॥

संपश्यमानो निपुण्य व्यवहारगतिं नयेत् ॥

Narada I. 37.

3 यत्र विप्रतिपत्तिः स्वाह्वर्माशास्त्रार्थशास्त्रयोः ।

अर्थशास्त्रोक्तसुसृज्य धर्मशास्त्रोक्तमाचरेत् ॥

Narada I. 39.

4 धर्मशास्त्रविरोधे तु युक्तियुक्तौ विधिः स्मृतः

व्यवहारो हि बलवान् धर्मो क्षेनावह्वीयते ॥

Narada I. 40.

5 वेदार्थोपनिषद्भृतात् प्राधान्यं हि मनोः स्मृतम् ।

मन्वर्थविपरीता या सा स्मृतिर्न प्रशस्यते ॥

Vrihaspati.

6 केवलं शास्त्रस्यानित्यं न कर्तव्यो हि निर्णयः ।

युक्तिहीने विचारे तु धर्महानिः प्रजायते ॥

Vrihaspati.

"The law of Manu is authoritative in the Satya Yuga, the law of Gautama in the Tretâ, in the Dwâpara Sankha-Likhita, and in the Kali the Law of Parâsara."¹

"When there is a conflict between the Veda and the Smriti and the Purâna, the Veda should prevail; (as between the two latter) Smriti is superior."²

Such Smriti texts as the above touch but the fringe of the subject of interpretation. It is Jaimini's Sûtras which fully deal with rules of interpretation with reference to both the questions, *viz.*, that of determining the meaning and intention of words and sentences, and that of ascertaining the precise legal character of them.

Classifica-
tion of the
Mimânsâ
rules of inter-
pretation.

The rules and principles of interpretation dealt with by the sūtras may be divided into following five classes :

Class I. Certain elementary principles which may be called the *axioms* of interpretation.

Class II. Certain broad and general principles as regards the *interpretation* of words and texts.

Class III. Certain broad and general principles as regards the *application* of texts.

Class IV. A large number of specific rules and settled points called *Nyâyas* (*maxims*), each applying to a particular case.

Class V. Certain rules specially bearing upon

1 कृते तु मानवा धर्मोऽस्मिन् तायां गीतसा. स्मृताः ।

द्वापरं शङ्खलिखिताः कलौ पराशराः स्मृताः ॥

Parasara I. 24.

2 श्रुतिस्मृतिपुराणानां विरोधो यत्र दृश्यते ।

तत्र श्रौतं प्रमाणन्तु तयोर्द्वेधे स्मृतिर्वरा ॥

Vyasa I. V. 4.

the character and interpretation of Smriti texts and usages.

At this place I shall merely give you a cursory view of the axioms and the general rules of interpretation and of the application of texts, as laid down by Jaimini and his followers, and then indicate the classification of the specific rules and settled points known as Nyâyas (maxims), and, lastly, briefly state the rules specially bearing on the Smritis and usages.

Class I. THE AXIOMS OF INTERPRETATION.

They are the following:

- | | |
|---|--|
| (1) "Every word and sentence must have some meaning and purpose." This axiom may be called the <i>Sarthakyata axiom</i> . | 1. Axioms of interpretation.
Sarthakyata. |
| (2) "Where one rule or proposition would suffice, more must not be assumed." This axiom may be called the <i>Laghava axiom</i> . | Laghava. |
| (3) "To a word or sentence occurring at one and the same place a double meaning should not be attached." This axiom may be called the <i>Arthaikatva axiom</i> . | Arthaikatva. |
| (4) "If a word or sentence which, on the face of it, purports to express a subordinate idea clash with the principal idea, the former must be adjusted to the latter or altogether disregarded." This may be called the <i>Gunapradhana axiom</i> . | Guna-pradhana. |
| (5) "Contradiction between words and sentences is not to be presumed where it is possible to reconcile them." This may be called the <i>Samanjasya axiom</i> . | Saman-jasya. |
| (6) "When there is a real contradiction, one of the contradictory matters may be adopted at option." This may be called the <i>Vikalpa axiom</i> . | Vikalpa. |

Class II. THE GENERAL PRINCIPLES OF INTERPRETATION.

2. General principles of interpretation.

These deserve to be called the GOLDEN RULES OF INTERPRETATION, and may be shortly stated as follows:

Sruti.

(1) When a verb and the case governed by it have a self-evident meaning and thus form a complete and independent sentence, this is called a *Sruti*; no attempt should be made to strain or twist its meaning. This may be called the Sruti principle of construction.¹

Linga.

(2) When the meaning of a word or expression is not clear on the face of it and its latent force or suggestive power has to be brought out by the suggestive power of some other word or expression, this is called a *Linga*; and this principle of construction may be called the Linga principle.²

Vakya

(3) Where what is apparently a complete sentence has, in order to make out a satisfactory sense, to be read as a part sentence connecting it with some other clause, this is called a matter of *Vākya* or Syntactical arrangement. The principle of construction consisting of this process is called the Vākya principle of construction.³

1 Sabara Bhasya III. iii. 14. p. 313, Jibananda's edition; Loughakshi Bhaskara. p. 5; Partha Sarathi Misra's Shashtra Dipika. p. 229; Apadeva p. 14, Jibananda Vidyasagara's edition.

2 Sabara Bhasya III. iii. 14, Jibananda Vidyasagara's edition p. 313; Loughakshi Bhaskara. p. 6; Salikanath Misra's Prakarana Panchika. p. 3 (Benares edition); Apadeva's Mimansa Nyaya Prakash. p. 19; Medhatithi's Commentary on sloka 3, chap 1, Manu.

3 Sabara Bhasya III iii 14, Jibananda Vidyasagar's edition. p. 313; Loughakshi Bhaskara. p. 7; Kumarila Bhatta's Tantra Vartika. p. 535; Apadeva's Mimansa Nyaya Prakash. p. 22, Jibananda Vidyasagara's edition; Raghunandana's Prayaschittatva p. 480.

(4) "When a sentence or clause by itself does not indicate its purpose but its purpose becomes clear when read with some other text belonging to any other topics discussed, this is called a case of *Prakarana*. The principle of construction herein involved may be called the *Prakarana* principle of construction.¹

Prakarana.

These principles form the science of interpretation.

The first and cardinal principle of interpreting written documents, whether they are private or public deeds and authoritative law books, is that where the writing exhibits the statement of an independent proposition in clear grammatical language couched in terms of unambiguous meaning, that proposition must be accepted and acted on as it is, however disagreeable or objectionable it may be to those who are called upon to interpret the writing. These latter are bound to accept the intention which the clear language of the writing expresses. They cannot twist and distort it to suit their own ideas and fancies. This is an universal principle prevailing in all civilized countries of the present day. It is called the literal principle. The author of the Aphorisms of hoary antiquity lays down the same principle and attaches to it the same importance. He and his followers have named it the *Sruti* principle.

Importance
of the *Sruti*
principle.

This *Sruti* principle is expressed and emphasised in various places and various ways to which I shall refer later on. For the present I would merely state it as the first of the general rules of *Mimāṃsā* interpre-

¹ Sabara Bhasya III. iii 14; Laugakshi Bhaskara. p. 8; Apadeva's *Mimāṃsa Nyaya Prakasha*. p. 26, Jibananda Vidyasagara's edition; Raghunandana's *Prayascittatva*. p. 479.

tation. Where this rule is applicable, no other rules of interpretation should be resorted to.¹

In cases, however, in which the language is not clear or the sense is not explicit or when words are ambiguous in meaning or the idea is dependent on some other idea, the interpreter cannot stop at the literal principle of construction. He must have recourse to other considerations. Accordingly the modern western writers on interpretation of statutes introduce other principles of interpretation, such as, interpretation by context, rules of beneficial construction, exceptional rules of interpretation according to equity and reason and the like. In departing from the rule of literal construction the departure should never be wider than is absolutely necessary.

Their relative force.

Rishi Jaimini and his followers proceed on the same lines. In fact, the rules of interpretation, they lay down in departure from the literal principle, are perhaps clearer, more logical and more distinctive than the rules discussed in our modern books. They lay down step by step how a freer and more rational principle is to be adopted one after the other, and how a wider departure from the literal principle should be avoided when a narrower departure would suffice.

Sthāna and Samākhyā.

There are two other principles of interpretation by means of *Sthāna* (place) and *Samākhyā* (derivative words) which are usually placed after Prakarana. But these not being of importance I would leave them apart. I shall explain the principles of Sruti, Linga, &c., at length.

I शुचिलिङ्गवाक्यप्रकरणस्थानसमाख्यानं समवाये पारदौर्लभ्यमर्थविप्रकर्षात् ॥

Jaimini III. iii. 14.

Class III. GENERAL PRINCIPLES OF THE APPLICATION OF TEXTS.

3. Principles of application of texts.

These may be treated under the following heads:

(1) "The principle of distinguishing between obligatory texts on the one hand and quasi-obligatory and non-obligatory texts on the other."

(2) "The principle of Adhikâra Vidhis, or that showing to whom the Vidhi texts are applicable."

(3) "The principle of Krama or that by which the order in which the texts are to be applied is determined."

(4) "The principle of Atidesha (reference) or that by which, the rules regarding one matter are made to bear on another matter."

(5) "The principle of Uha (adaptation) or that by which, in the course of effecting an Atidesha, necessary modifications are to be made to secure a proper adaptation."

(6) "The principle of Badha (bar) or that by which, in the event of incongruence between one thing and another, either in connection with the application of Atidesha or otherwise, a subordinate incongruent matter is barred by the principal."

(7) "The rule of Tantratâ and that of Prasanga, both of which provide against the unnecessary repetition of the same act."

Class IV. THE SPECIFIC RULES CALLED NYAYAS.

The Nyâyas (maxims) regarding the *application* of texts *i. e.*, those falling under the general rules, class III, need not be separately considered. Those regarding the interpretation of words and texts may be treated under four general heads:

4. Nyayas.

(i) "Those that relate to the interpretation of words."

(ii) "Those bearing on the rules relating to the construction of texts."

(iii) "Those bearing on the rules of interpreting prohibitory and apparently conflicting texts."

(iv) "Those of a miscellaneous character."

5. General rules regarding Smṛiti texts and usages.

Class V. RULES WHICH SPECIALLY BEAR ON THE CHARACTER AND INTERPRETATION OF THE SMṚITI TEXTS AND USAGES.

These are contained in Book I, chapter iii of Jaimini's work. They are as follows:

(1) "The authoritativeness of the Smṛiti law is a matter of inference, because the promulgators of it are the same as those of the Vedas."¹

(2) "If there be a direct conflict between a Smṛiti text and a Vedic text, the latter must prevail."²

(3) "If a Smṛiti text is based on a gross motive which is inconsistent with the spiritual motive of the Vedic law, then it is to be ignored."³

(4) "Established and approved usage has the force of law without reference to the causes which brought them into existence."⁴

(5) "If there be two conflicting usages, that which has the support of the Shâstra is to prevail."⁵

1 Jaimini I. iii. 2.

2 Jaimini I. iii. 3.

3 Jaimini I. iii. 4.

4 Jaimini I. iii. 7.

5 Jaimini I. iii. 9.

(6) "Authorized terms and expressions belonging to foreign (Mlechcha) dialects are to be taken in the sense attached to them according to those dialects."¹

(7) "A rule of usage or a rule of Smṛiti must be taken to represent the short, simple and general proposition, such as, a Vedic Vidhi."²

These general principles regarding the Smṛiti law and the customary law, lie at the threshold of the subject of interpreting the Hindu Law. The axiomatic or elementary principles and the general principles of interpretation, *viz.*, Sruti, Linga etc. will be the subject of the second lecture. The general rules regarding the application of texts, *viz.*, those of distinguishing between obligatory and non-obligatory texts, Adhikāra Vidhis, Atidesha, Uhā etc. will be the subject of the third lecture. In the fourth lecture the principles laid down by Jaimini with special reference to the Smṛiti and the customary law will be discussed. The fifth lecture will contain an enumeration and explanation of various Nyāyas (maxims) dealing with the interpretation of words and positive texts. In the sixth lecture I shall deal with Nyāyas (maxims) bearing on the interpretation and application of negative texts and on the conflicts of texts in general. In the seventh I shall treat of Nyāyas or maxims which are called Laukika Nyāyas (popular maxims), many of which are regarded as matters of Shāstra (governing rules) by text writers. In the eighth lecture I shall discuss the lines on which Jīmutavāhana and Vijnānesvāra proceed and how they apply the Mimāṃsā principles. The ninth lecture will deal with the application

Plan of the
lectures to be
delivered.

¹ Jaimini I, iii. 6 Adhi.

² Jaimini I iii. 8 Adhi.

of Mimāṃsā principles by other Hindu lawyers and the presumptions of Smṛiti Law available for purposes of interpretation. In the tenth lecture you will have a general view of the interpretation of Hindu Law by the courts under the British rule. In the eleventh lecture I shall show how the Mimāṃsā principles of interpretation correspond to the principles adopted by English writers and those embodied in the maxims of the Roman Law. The subject of the twelfth lecture will be the old Vedic Jurisprudence and the subsequent development of the Jurisprudence of the Vyāvahāra Law and also a cursory account of Mimāṃsā philosophy and Mimāṃsā literature. In the thirteenth I shall give you a resume of the subject.

LECTURE II.

The General Principles of Mimansa Interpretation.

Following the plan indicated in the Introductory Lecture I shall first deal with those elementary principles which may be called the *Axioms of Interpretation*. They lie at the very threshold of the subject. Then I shall proceed to discuss those *General rules of interpretation* designated as the rules of Sruti, Linga, Vākya and Prakarana.

The term axiom is usually used in mathematical subjects, specially in Euclid's Geometry. Thus its use in a treatise on interpretation may call for a little explanation. The explanation is simply this. The elementary principles of the Mimāṃsā Shāstra bear the same relation to those general principles of interpretation which are connected with properties of words and sentences and passages, as the axioms of Euclid bear to the principles connected with the properties of angles, circles and rectilinear figures &c. I may also say here, that as the axioms and postulates and the general principles of the properties of figures bear on the specific propositions of Euclid so do the Mimāṃsā self-evident principles and the Mimāṃsā general principles, regarding words and sentences &c., bear on the specific Mimāṃsā propositions called the Nyāyas or maxims.

SECTION I.

**The elementary principles or the axioms
of interpretation.**

They are:

I. The Sârthakya axiom.

Axioms of
interpreta-
tion.

Every word and sentence must have some meaning and purpose.

II. Lâghava axiom.

Where one rule or proposition would suffice, more must not be assumed.

III. The Arthaikatva axiom.

To a word or sentence occurring at one and the same place a double meaning should not be attached.

IV. The Gunapradhâna axiom.

If a word or sentence which, on the face of it, purpor to express a subordinate idea clash with the principal idea, the former must be adjusted to the latter or altogether disregarded.

V. The Sâmanjasya axiom.

Contradiction between words and sentences is not to be presumed where it is possible to reconcile them.

VI. The Vikalpa axiom.

When there is a real contradiction, one of the contradictory matters may be adopted at option.

The first elementary principle or axiom

First axiom
discussed.

“ Every word and sentence must have some meaning and purpose attached to it.” This axiom is shortly expressed by the Kârîkâ, “More words, more meaning.” This means that if the sense that you attach

I अर्थविकल्पात् अर्थविकल्पात् ।

to a passage is made out by a part of the passage, then the remaining part must have an additional sense; otherwise your construction is faulty. The fault of construing a passage so as to leave some part of it without any meaning is called *Anarthakyadosha* (the fault of assuming meaninglessness).

Jaimini refers to this axiom constantly. In opening the subject of Arthavâda, he puts in the mouth of the Purvapakshin (objector) the argument, that "whatever enjoins an action is Âmnâya (Veda), but there are numerous passages which do not contain such an injunction; they must, therefore, be Anarthak (meaningless). Hence, the Vedas, having this Anarthakya-dosha, cannot claim the perfection of eternity."¹ The author answers: "They are not meaningless, each of them is part and parcel of some Vidhi (command enjoining action). Thus it is an expatiation of some particular Vidhi. This expatiation (stuti) expresses a meaning."² I have rendered the word 'stuti' by expatiation. It is taken as the equivalent of Prâshastya, meaning that which makes a thing explicit. Thus, the passages of the Vedas which do not lay down a rule of conduct, and which, as such, are charged with being meaningless, are rescued from the charge by showing that they have a meaning and purpose, *viz.*, the meaning and purpose of making a Vidhi explicit and clear.

Then, with reference to the illustrative maxim called Vidhibannigadâdhikarana (a declaration appearing like a Vidhi), the same elementary principle of Anarthakya and Arthakya is appealed to. Referring to the

1 आत्मनोऽस्य क्रियार्थत्वादानर्थक्यमतदर्शनात् । Jaimini I. ii. 1.

2 विधिनान्नैकवाक्यत्वात् स्वार्थेन विधीनां स्तुतिः । Jaimini I. ii. 7.

a double share or a half of the property if he has got both son and property. The effect of this construction is, the author points out, to say that one who has not got a son to share with, takes the whole property. 'But is not this something meaningless?' says the author indignantly. For, it is an admitted rule that in cases of partition among any relatives, say brothers, if one has acquired wealth and has no son, he takes a double share of his acquisition. Why then this redundant proposition regarding the son? In short, says Jimutavâhana, if Kâtyâyana meant by the expression 'from acquisition of son-property' to say 'from the fact of having acquired both son and property' and not 'from property acquired by the son,' then he would be guilty of Anarthakya-dosha (fault of redundancy). For, there is already the general rule that, one takes a double share who has acquired property and who has got relatives to share it with.

Again Jimutavâhana in paragraph 79, chapter II (Colebrooke's work) says: "Besides, if the mention of greater or less shares here intend the regulated deductions, the second verse of the stanza 'let him separate his sons according to his pleasure' becomes superfluous; for that, which was to be declared, is fully specified in three other verses of that text. But, according to our interpretation, the phrase 'let him separate his sons according to his pleasure' relates to his own acquired wealth; while the allotment of the best share, and an equal distribution, both regard an estate inherited from the grandfather. There is consequently nothing superfluous."¹

Then again in para. 8, section 1, chapter XI he em-

1 किञ्च उद्धाराभिप्रायेण समन्युनाधिकत्ववर्णने दृष्ट्या विभज्जेदित्यनर्थकं

phasises this principle by which an interpretation involving an assumption of tautology is to be avoided. Regarding the widow's right of succession he says: "The meaning therefore is, 'the wife shall obtain her husband's entire share' not 'she shall obtain her own entire share;' for the direction, that 'she shall obtain' would be impertinent in respect of her own complete share. Since the intention of the text is to declare a right of property, it ought not to be interpreted as declaring such right in regard to the person's own share; for, that is known already from the enunciation of it as that person's share, [and it need not therefore be declared]."¹

This axiom of avoiding a construction which involves the imputation of redundancy is universal. Modern western writers on construction of statutes give it a high place in their works, and there is a leading English case on this point *viz.*, *Reg v. Bishop of Oxford* (L. R. 42 B. D. 245) which lays down: "A statute ought to be so construed, that if it can be prevented, no clause, sentence or word shall be superfluous, void or insignificant."

The second elementary rule or axiom.

Second
axiom dis-
cussed.

"*The construction which makes the meaning simpler and shorter is to be preferred*"² This includes the rule that when one rule or proposition would suffice, more must not be assumed. Mādhavāchārya exemplifies this

पदं एतदितरपदत्रयेणैव वक्तव्यस्वाभिहितत्वात् असम्भवे तु इच्छया विभजेदिति
स्वोपापधनविषयं श्रेष्ठांशतासमानांशतयोस्तु पैतामहधनगोचरत्वमिति न किमप्य-
नर्थकम् ।

Dāyabhāga Ch. II. para. 79.

1 भर्तुः कृत्स्नसंशं पञ्जीलभित न तु स्वांशकृत्त्वमित्यर्थः कृत्स्नं स्वांशोद्देशेन लभे-
तेति विधानानुपपत्तेः स्वामिभावज्ञापनार्थत्वादस्य न च स्वांशे स्वामिभावज्ञापनमर्हति
स्वांशज्ञापनेनैव ज्ञातत्वात् । Dāyabhāga Ch. XI. Sect. 1. para. 8

2 गौरवः दीपः ।

principle in his first Adhikarana of Ch. I, Bk. II. He puts the topic in the following slokas:¹—

Gourava,
explanation
from Nyaya-
malavistara.

“The Apurva sanction of a Vidhi proposition is made out by all the terms composing it.”

“Whether by each term separately or by one term out of them is the question.” The answer is: “By investigating the relation of the fruit (Apurva sanction) it is found to belong to a single term which is the principal one to which the others are subordinate.”

“This being the simpler construction, the Apurva appertains to one term, the rest forming its train.”

He then explains that if Apurva be ascribed to each term, this would be a case involving the fault of Gaurava (useless multiplicity); whereas, ascribing it to one term constitutes it the Lāghava (simpler construction) and is, therefore, to be preferred.

The *Holūka* maxim is based upon this principle. When a Srauta Vidhi (Vedic rule) is to be presumed as corresponding to a matter of usage or a matter contained in the Smritis the Vedic rule to be presumed must be in the simplest and most general form. For instance, although by usage the practice of observing the Holāka (the Hooli festival) obtains only in the eastern portion of the country, the presumed Vedic Vidhi should be in the simplest and most general form:—

“Let the usage of the Holākā be observed.” It

1 विधिवाक्यं पदैः सर्वैरपूर्वै-प्रतिपाद्यते।

प्रत्येकमथवेकेन सर्वैस्तत्प्रतिपादनम्।

फलान्वयित्वात्सर्वेषां प्रधानान्वयलाभतः।

लाघवादेकबीध्यत्वं तच्छेदस्तु पदान्तरम्॥

Jaiminiya Nyāyamalavistāra II. i. Adhi. 1.

should not enter into the complex question as to where the usage exists or where it may be introduced. In short, the Hindu Jurisprudence favours the principle that Vidhis should be short and simple and not complicated. It would leave complicated questions incidental to a Vidhi to be dealt with by bye-laws of the nature of Prayoga Vidhis.

Gourava,
explanation
from Daya-
bhaga.

Jimutavâhana refers to the Holâkâ maxim more than once. Regarding the subject what effects may be partitioned among brothers, the question arises how far properties acquired by the valour &c., of one brother should be shared with other brothers. Jimutavâhana reproduces the texts of a number of Smriti writers on the question. These texts taken together are to the effect that what is gained by the valour &c., of one brother with the aid of the common stock should be brought under partition; the acquirer taking a double share. But it is sufficiently indicated that when a thing is gained by the valour &c., of one brother without the use of the common stock as well as affectionate gifts to him should not be subjected to partition; such things being the exclusive property of the acquirer alone. Having shown this Jimutavâhana puts the question how is the law on the subject to be put? Whether all instances in which a brother's self-acquisitions are free from partition should be stated, and then it should be stated that the rest are subject to partition. He says that such a course would be not only inconvenient, but positively impracticable. For, it is impossible to make an exhaustive list of cases in which a brother may have acquired property which ought not to be partitioned. He says the rule of law on the subject should be stated

following the Holāka maxim in the simple and general form:—

“Divide wealth acquired with the use of the common stock.”

This would include cases in which property was acquired by valour and skill &c., with the aid of the common stock, but would exclude all cases in which it was acquired either by valour &c., or otherwise, without the aid of the common stock.¹

If there be anything in English books to which the above principle may be said to correspond it is the principle that construction should not be burdensome.

The third elementary rule or axiom.

“A double meaning should not be attached to a word or sentence occurring at one and the same place.”

First, as regards words. There is no doubt that if a word occurs in different places it may bear different meanings; and the same is the case with a clause. But it is manifestly improper to take a word used at one and the same place in different senses. This is expressed in the well-known proposition:—

Third axiom discussed.

“A word once uttered must have only one meaning.”²

In paragraph 30, section II, chapter III Jimutavāhana applies this axiom to the use of the word ‘mother’ occurring in the following text:—

Illustration from Daya-bhaga.

“The mother should be made an equal sharer.”³ He says: ‘Since the term mother intends the natural parent

1. Vide Sect. 1, Ch. VI., specially paras 21-23, 27, 33-38, Colebrooke.

2 सङ्गदुश्चरितः शब्दः सङ्गदेवार्थं गमयति ।

3 समाशङ्कारिणी माता । Daya-bhāga Ch. III. Sect. 1. 29.

it cannot also mean a step-mother. For a word employed once cannot bear the literal and metaphorical senses at the same time."¹

Srikrishna Tarkalankara and others object to the expression : "There reside fish and milkman in the Ganges ;"² for, a double sense must be attached to the word Ganges in order that it may be the abode of both fish and men. It means the land on the side of the stream in the case of milkman and the flowing stream in the case of fish.

Vakyabheda
from ambi-
guity of
words.

Then as regards sentences. When a word is used in a double sense, the whole sentence in which it occurs has a double meaning. Therefore, the use of a word in a double sense is included by the Mimāṃsakās in what is called Vākyabheda (splitting a sentence). But strictly speaking the splitting of a sentence is a little different from attaching a double sense to it. The distinction, however, is not generally made.

There are the expressions :—

Udbhidā Yajeta (perform the ceremony by the vegetable).³

Shyenena Yajeta (perform the ceremony by the hawk).⁴

In these expressions if the term 'Udbhidā' (the vegetable) or the term Shyenena (the hawk) be taken to be the name of a ceremony as well as to denote the

1 समाशङ्कारिणौ मतितिवचनात् सादृश्यजननीपरत्वात् न सपत्नीसादृश्यत्वमपि संज्ञतं श्रुतस्य मुख्यगोचरत्वानुपपत्तेः ।

Dâyabhāga Ch. III. Sect. 1. 30.

2 नङ्गायां घोषमस्यौतः ।

3 उद्भिदा यजेत ।

4 श्येनेन यजेत ।

use of vegetable products in the case of the one and the use of the hawk in the other, then there would be the fault of Vākyabheda¹ (split of the sentence) according to the Mimāṃsakās. Therefore they say the terms must be taken only as proper names of certain ceremonies without any reference to their denotation.

Vākyabheda, strictly speaking, has reference to the question whether a sentence should be taken to stand for one leading idea to which other ideas expressed in it are subordinate or to stand for two or more ideas co-ordinate to each other. It is taken to be a fundamental rule of composition with sanskrit authors that there should be only one leading idea in one sentence. In fact, a sentence (Vākya) is defined to be "a proposition containing a single idea, but where the expression of that idea is divided into parts, each part stands in need of the other or others."²

The conception of Vākyabheda explained.

This being the orthodox principle of a Vākya (sentence), old books or old sayings must be presumed to have been composed on this principle. Hence it is an axiom that what is, on the face of it, a single Vākya must not be construed to contain two co-ordinate ideas so as, in effect, to make it, as if it were, two Vākyas. To do this is called Vākyabheda (splitting a sentence). Thus we have the popular maxim: "Where it is possible to take a sentence as embodying a single idea or a single proposition, it is wrong to attribute two ideas or two propositions to it."³ It is still more wrong once to

1 वाक्यभेदः ।

2 अर्थैकत्वादिकं वाक्यं साकाङ्क्षं चेद्भिन्नाणि स्यात् ॥

Jaimini II. i. 46.

3 सन्नवत्येकवाक्ये वाक्यभेदो न युज्यते ।

take it as a single proposition and again as two co-ordinate propositions.

Jaimini refers to the question of Vākyabheda very constantly. In sūtra 25, Ch. II, Bk. I, he says, "if in the text which is the subject of Vidhibannigādādhikarana the last portion be read as a Vidhi as well as the first portion, then this will cause the fault of Vākyabheda."¹

The effect of this principle *viz.*, the principle of presuming a sentence to have only one leading idea is that, where there is a word expressing an injunction in one part of it the remaining part or parts must be regarded as mere Arthavādas which by definition, are merely subsidiary clauses (Vākyashesha). Any effort to raise an Arthavāda clause to the rank of an injunction (Vidhi), auxiliary or otherwise, is reprehensible and not allowed. In fact, to read an Arthavāda clause as a Vidhi, is a confusion of ideas. It amounts to giving a double meaning to the same clause, once by taking it as a single proposition and again as two co-ordinate propositions.

In our modern law-books, such as Jimutavāhana's Dāyabhāga or Vijnanesvara's Mitāksharā, texts of the nature of an Arthavāda are not usually called by that archaic name but are characterised as moral precepts as opposed to a Vidhi proper. What is a moral precept? It is a proposition to indicate some salutary truth which is involved in a Vidhi proposition. So it is virtually of the nature of an Arthavāda. Thus, when Jimutavāhana speaks of the text regarding the duty of an owner not to alienate his property to the detriment of the inter-

१ विधी च शस्त्रमेदः स्यात् ॥

Jaimini I ii. 25.

ests of his children and the others, he speaks of it only as imposing a moral duty not intended to affect the full ownership of the man. He in effect regards the text in the light of an Arthavâda and, as such, he would not allow it to be reckoned as a Vidhi affecting the Vidhi creating ownership.

The fourth elementary rule or axiom.

"If a word or sentence purporting to express a subordinate idea clash with the principal idea, the former must be adjusted to the latter or must be disregarded altogether."

Fourth
axiom
dis-
cussed.

This principle is generally expressed by the popular maxim to be explained hereafter known as the maxim of 'the great and the small fish' i.e., the great fish eating up the small.

It has its counterpart in English law books in the principle that, where a gift is made in absolute terms, conditions imposed to restrict the enjoyment of the thing given are not valid.

In sutra 9 Ch. III, Bk. III, we have

"When a Guna Sruti (auxiliary clause) clashes with a Mukhya Sruti (mandatory clause), the latter is to prevail as Veda."

Again in sutra 39, Ch. III, Bk. VI, it is laid down :

"When a purpose and a material conflict, the purpose is to be given effect to (somehow) in the absence of another suitable material, for materials are accessory as regards the primary object."

१ वृचमुख्यव्यतिक्लमे तदर्थत्वात् मुख्येन वेद संवीतः ।

Jaimini III. iii. 9.

२ राज्यायां तद्वत्त्वादिभिर्विषय नियम्येत ।

Jaimini VI. iii. 39.

Uha and
Bādha, illus-
trations of
this axiom.

Here the conflict spoken of is between the purpose of a Vidhi and a material expressly prescribed for use in it. Even in such a case where there is an express provision for a material, the material is either to be modified or done away with when it is found to militate against the purpose. The application of this axiom is very largely illustrated by what are called Uha and Bādha. Yajnas which are called Vikriti and which owe their origin to some imperfect Vidhi text have to draw upon the stock of some other Yajna for their details. Thus details must be modified to suit the Vidhi text of the Vikriti Yajna formed as above. When the detail consists of the application of a particular Mantra, the language of such a Mantra must be modified to suit the Vikriti Yajna. This among other things is called Uha. When parts of the detail to be borrowed as above, are altogether inconsistent with the main Vikriti Yajna, such parts are to be dropped off. This is called Bādha. Uha and Bādha will be fully explained later on. Here I refer to them to show that they are illustrations of the axiom that what is auxiliary on the face of it should be modified or given up to suit that to which it is or should be auxiliary.

In the Vedic law the Utpatti Vidhi or that which directly enjoins an act for acquisition of heavenly bliss is the principal (Mukhya) law. Injunctions regarding appliances to carry out the above act are called Viniyoga Vidhis. So these are comparatively subordinate. Then there is another class of Vidhis (rules) which merely lay down the manner in which the Viniyoga Vidhis are to be carried out. These are called Guna Vidhis, which are clearly subordinate. They

are subordinate in the second degree, being subordinate to the Viniyoga Vidhis which are subordinate to the Utpatti Vidhi. Then again, Arthavâdas and Nâmadheyas, as explained before, are subordinate in a still greater degree. In a case of conflict between the text of a lower grade and one of a higher grade, the former must yield to the latter.

The above phraseology, no doubt, is peculiar to the Vedic law. But the same principle of adjustment applies to the positive law contained in Vyâvaharakânda of the Smritis. It is only in respect of the nomenclature that the Vedic law and the Vyâvahâra law differ. In the Vyâvahâra law practically there is no Utpatti Vidhi. The Vidhis of the highest and perfect obligation in the Smritis correspond to the Viniyoga Vidhis of the Vedas. But all the same there is the distinction in the Vyâvahâra law between a principal Vidhi and a subordinate Vidhi; for instance, as regards adoption the provision regarding the act of adoption is of higher importance than the Vidhis settling the details of the manner of adoption. So, if in any case a rule regarding the details should have the effect of upsetting the principal rule enjoining adoption, the rule regarding the detail must give way. You have instances of this in the Law of Adoption. Of course express and clear subordinate rules have the same force as the principal rules when there is no conflict.

The axiom holds good equally with the Vyâvahâra law.

The fifth elementary rule or axiom.

'Contradictions should not be too easily assumed.'

This is exhibited by Jaimini's aphorisms in various

Fifth axiom
discussed.

ways, In the very first book of his work, in sutra 9 Ch. II, Jaimini lays down a very broad principle of reconciling contradictions. It is as follows :—

“The inconsistencies (you assert) are not actually found. The conflicts consist in difference of application (of the injunction). The real injunction is not affected by application. Therefore there is consistency.”¹

The commentators explain by the principle indicated above that the text “One must not speak falsehood”² is not in conflict with the text “The tongue of man is disposed to falsehood.”³ They explain that the principle of both the texts is to prohibit falsehood. The words are different being differently applied. The rule on this subject is generally expressed by the proposition that the proper course for reconciling apparently conflicting texts is to see whether they apply to different sets of facts and to different purposes.

Recon-
ciliation by
the Artha-
vada prin-
ciple.

There is another mode of effecting conciliation between apparently conflicting texts. It is by taking one of the texts to be an Arthavāda. In the second Adhikarana, Ch. VIII, Bk. X, it is laid down that although apparently the prohibition of the *two ajyabhagas* (*Tau pasau*) in the *Soma Yaga* is contradictory to the character of that Yaga, yet it is really not so. There is no provision for *ajyabhaga* in the *Soma Yaga*, therefore the prohibition is merely an Arthavada in praise of the Yaga making explicit what is implicit.⁴

1 अप्राप्ता वानुपपत्तिः प्रयोमे हि विरोधः स्वाच्छर्वास्त्रप्रयोगभूतसन्नादुपपद्येत ।

Jaimini II. i. 9.

2 नाकृतं वदित् ।

3 अकृतवादिनो वाक् ।

4 नतो पन्नी करोतीत्यादिनिषेधसार्धवादताधिकरणम् ।

अपूर्वो सोमे नैव अज्यभागो प्राप्नुतस्तन्नात्र प्रतिषेधः । प्रज्ञं सार्धः सोमे

The sutra on which the Adhikarana is constructed distinctly says :

“(In a case of conflict) with what is an Apurva Vidhi the conflicting text (should be taken as an Arthavâda)”¹

In fact, in reconciling between a positive and negative text it is of great importance, first to determine the character of the negative text. If the negative text be in the nature of a Pratishedha (prohibition pure and simple), then there would be but little chance of reconciling it with a text affirming the thing prohibited. But if it be only of the nature of a Paryudâsa (a qualified or partial prohibition) which Jaimini regards as merely an Arthavâda, meaning an explanation limiting the scope of the positive text, then there will be no conflict. A Paryudâsa is in some cases merely a Niyama in the sense of not being imperative. As a positive Vidhi may either be imperative or directory *i. e.*, laying down a Kratu Dharma (positive duty) or a Manushya Dharma (moral duty), so also a negative Vidhi may be of either character. In the third Adhikarana* of Ch. I, Bk. IV, the illustration given by the orthodox commentators, (by orthodox commentators I mean to exclude Guru Prabhakara) is to the effect that a certain vow (Vrata) not to do a certain act, for instance, looking at the rising sun is a Purusha Dharma merely, and is thus a Paryudâsa and not a Pratishedha. Therefore, there is no conflict between the provision requiring the observance of such a vow and the texts which enjoin as a general rule that the

आन्ध्रभागी न क्रियते पञ्चावपीति ।

Jaimini X. viii. 2nd Adhi. Savara Bhashya.

1 अपूर्वे चार्थवादः स्यात् ।

Jaimini X. viii. 5.

2 प्रजापतिव्रतानां पुरुषार्थत्वाधिकारश्च

Jaimini IV. i. Adhi 3.

rising sun should be seen. In general application however, Paryudâsa is merely what we call an exception.

Jimutavâhana uses Paryudâsa in this sense in para 36, Sect. 1, Ch. VI, where he says that if you take the several texts regarding self-acquisition as Paryudâsa (exceptions), then all possible cases of self-acquisitions must be regarded as exceptions to partible property. Having made this observation in the succeeding para. (para. 37) he says that the several texts regarding self-acquisitions are not meant as exceptions but are given only as illustrative instances. In the latter para. (he observes) that where there is a negative rule embodying a number of instances, but there is no exhaustive enumeration of the cases which are intended to be covered thereby, the negative rule cannot be a Paryudâsa. The instances are merely in the nature of an Arthavâda of a negative character.¹

Recon-
ciliation by
referring to
different
subject
matters.

The principle of reconciliation by referring apparently conflicting texts each to a different subject matter

१ तदेवमादिवचनैर्यावद्वर्णवर्णान्तरालानां संकीर्णजातानां सकलविद्यानिमित्तस्य सौदायिकस्य च स्वजनदत्तस्य च तथा मित्रविवाहमनुपपन्नप्राप्तस्य श्रौत्यै च यजुर्वादिना प्राप्तस्य ऋषिसेवावाञ्छित्यादिना च अमेचीपार्श्वितस्य अनुपघातेन च स्वशक्तिमात्रार्जितस्य पर्युदासात् सर्वमेव पर्युदत्तमिति तदितराभावात् निर्विषयी विधिः अथ यथा कथञ्चिदेकीदिकी वा विषयी लभ्यते तदा तदेव स्वपदेन निहेतुमुचितं मुनीनां अविभक्तार्जितममुकधनं विभजेदिति लाघवात् स्वपदात् श्रौतप्रतीतेः नतु श्रौत्यादिधनेतरतया बहुतरपदप्रयोगापत्त्या गौरवात् पर्युदासत्वे च सर्वमुनिभिरेव सकलपर्युदसनीयपदानुकीर्तनं कर्तव्यं तद्विना तदितरज्ञानानुपपत्तेः मुनीनां पर्युदासवचनं बालप्रलपितमिव स्यात् प्रदर्शनार्थत्वे तु अनाख्यया केनचित् किञ्चित् कौर्त्तितं केनचिच्चकिञ्चिदिति युक्तं सर्वस्याकौर्त्तनं तस्मात् साधारणधनीपघातार्जितं धनं विभजेदिति विधिः श्रौत्यादिपदेषु वाक्येषु प्रदर्शनाच्च अतोऽविभक्तार्जितत्वमात्रेण धनस्य साधारणत्वाभिधानमप्रामाणिकम् ।

Dâyabhâga paras. 36, 37. Sect. i. Ch. 1.

is fully illustrated by Dāyabhāga. Jimutavāhana has two sets of texts before him with regard to the right of sons born after a partition, apparently not consistent with each other. On the one hand are the texts :

“ A son, born after a division shall alone take the paternal wealth ; or he shall participate with such [of the brethren,] as are re-united with the [father].”¹

“ A son, begotten after partition, takes exclusively the wealth of his father ”²

“ All the wealth which is acquired by the father himself, who has made a partition with his sons, goes to the sons begotten by him after the partition. Those, born before it, are declared to have no right ; as in the wealth so in the debts likewise, and in gifts, pledges and purchases.”³

On the other hand there are the following texts :
“ Sons, with whom the father has made a partition, should give a share to the son born after the distribution.”⁴

“ When the sons have been separated, one, afterwards born of a woman equal in class, shares the distribution. His allotment must positively be made, out of the visible estate corrected for income and expenditure.”⁵

1 ऊर्ध्वं विभागाज्जातस्तु पित्रासिद्धं हरिद्वनम् ।

संस्तुष्टास्तेन वा ये स्युर्विभजेत स तैः सह ॥ Manu and Narada,

2 विभक्तजः पित्रासिद्धः ।

Gautama.

3 पुत्रैः सह विभक्तेन पिता यत्स्वयमर्जितम् ।

विभक्तजस्य तत् सर्वमनीशः पूर्वजाः स्मृताः ॥

यथा धने तद्यथेऽपि दानाधानकृशेषु च ।

Vrihaspati

4 पितृविभक्ता विभक्तानन्तरीत्पन्नस्य विभागं दद्युरिति । Vishnu.

5 विभक्तेषु सुतीजातः सवर्णाय विभागभाक् ।

दृष्ट्वाहा तद्विभागः स्वादायव्ययविशीधितात् ॥ Yājñavalkya.

Jimutavâhana reconciles these two sets of texts by holding that the former set applies to cases of property which is the self-acquired property of the father, and in respect of which the partition by the father is at his own pleasure ; and that the latter set to the case of property descended from the grandfather in which case a partition before the mother is past child bearing is not valid.

Then, again, when owing to difference of schools (sâkhâs) different practices arise with reference to the same Vidhi, such different practices cannot be regarded as cases of conflict. This is dealt with in the last Adhikarana Ch. IV, Bk. II. As I shall have again to revert to this subject of reconciling apparently conflicting texts I need not enlarge on this matter here.

The sixth elementary rule or axiom.

Sixth
axiom dis-
cussed.

" When there is a real contradiction, one of the contradictory matters may be adopted at option."

According to the rules of the construction of statutes as given by the English writers, if one provision of law is contradicted by another, which may be presumed to be subsequent to the former, the latter provision prevails as having a repealing character. But in the Vedas there is no presumption of one command being subsequent to another in point of time. Therefore, it is presumed that in cases of contradiction neither of them are intended to be operative, that the intention is to place both at the discretion of those concerned. Hence the principle of option.

But as regards the Smritis, these are of a derivative authority. All the Smritis on a given point are supposed to derive their origin from one and the same Vedic command. So, in their case an interpreter is

bound to reconcile them somehow or other. I shall have to discuss the question latter on.

The conflict between two Vedic Vidhis which necessitate option, that is to say, which in a manner stultifies both the Vidhis, must be clear and patent. The conflict must be, in the first place, a direct conflict between two Vidhis which are of a co-ordinate character. In the next place, the positive Vidhi must be one addressed to the senses. An example of this is given in the third Adhikarana, Ch. VIII, Bk. X, in the two texts regarding the use of the *shorashi* vessel at the dead of night, in one of which the use of it is enjoined and in the other prohibited.¹ Here, there being a direct and clear conflict, the one or the other text can be followed at option.

But this is not the case where the negative Vidhi does not contain an absolute prohibition (Pratishedha), but merely a qualified prohibition (Paryudâsa) as already explained. An example of this is given in the first Adhikarana, Ch. VIII, Bk. X. In this Adhikarana the text referred to, is one in which the leading clause contains the general injunction for the performance of a certain act *viz.*, uttering certain words in a certain transaction with a clause added to it prohibiting that act in a part of the same transaction.² This prohibition is a Paryudâsa. In fact it is an exception as we understand the term. Thus there is no conflict so as to lead to an option.

1 नातिरात्रे गृह्णाति षोडशिनमिति निषेधस्य विकल्परूपताधिकरणम् ।

Jaimini X. viii. Adhi. 3.

2 महापितृयज्ञे ये यजामहे इति पञ्चाक्षरं करोति नानुशजेषु यजामहे करोति । Savara Bhashya X. viii Adhi 1.

Option is the result where the contradiction can not possibly be explained away. Option means ignoring the authority of not only of a single text but of two texts together. Therefore it can not be legitimate except as a last resort. Where one of the two texts is a Paryudasa (exception) or where they are referable to different sets of facts, the necessity for option does not arise. But you cannot help it if the conflict is direct, and has reference to the same tangible object, as in the case of the *Shorashi* maxim mentioned above.

But there is another class of cases in which an exception (Paryudasa) is not allowed. This is the class covered by the *Kalanja*¹ maxim which inculcates that where there is a prohibition of some thing morally and spiritually wrong, such prohibition must be taken to be general and far-reaching. Therefore in the presence of such a prohibition texts, affirming any matter even distantly or incidentally approaching the wrong prohibited, would be taken to be overridden by the prohibition.² The *Kalanja* maxim, however, being directed to matters spiritual or moral, obtains mostly in the sphere of the Vedic law or of the Achârakânda of the Smriti law. It has little bearing on the positive Vyavahara law. So cases of conflict under the Vyavahara law is little affected by the *Kalanja* maxim as will be seen when that subject will be later on dealt with.

1 कलञ्जः । Jaimini VI. ii. Adhi 5.

2 अतः तत्परिहाराय सर्वेषामेव जातीयकं वर्जयितव्यम् । Shastra-dipika p. 45, Benares edition.

Section II. The four General Principles broadly explained.

You have already seen how the axioms as a class differ from the general principles and how these latter differ from the Nyayas (maxims). The axioms are such elementary propositions regarding interpretation as are taken to be self-evident. The general principles are those principles which are arrived at after an examination of those materials with which an interpreter has generally to deal; such as, meaning of words, structure of sentences, the relation of topics etc. The Nyayas are formulas applicable to particular cases or specified circumstances. Having explained to you the axioms of interpretation, I now proceed to explain broadly the general principles as I have indicated them in the Introductory Lecture. I reproduce below the statement made of these principles in the Introductory Lecture.

(1) When a verb and the case governed by it have a self-evident meaning and thus form a complete and independent sentence, this is called a *Sruti*; no attempt should be made to strain or twist its meaning. This may be called the *Sruti* principle of construction.

(2) When the meaning of a word or expression is not clear on the face of it and its latent force or suggestive power has to be brought out by the suggestive power of some other word or expression, this is called a *Linga*; and this principle of construction may be called the *Linga* principle.

(3) Where what is apparently a complete sentence has, in order to make out a satisfactory sense, to be read as a part sentence connecting it with some other clause, this is called a matter of *Vakya* or syntactical arrange-

ment, The principle of construction consisting of this process is called the *Vakya* principle of construction.

(4) "When a sentence or clause by itself does not indicate its purpose but its purpose becomes clear when read with some other text belonging to any other topics discussed, this is called a case of *Prakarana*. The principle of construction herein involved may be called the *Prakarana* principle of construction.

These principles form the backbone of the Hindu system of interpretation.

A general view of the four principles.

Sruti prin-
ciple

Roughly speaking, the principle of interpretation called Sruti is identical with the modern principle as laid down by Maxwell in the following passage :

"Where, by the use of clear and unequivocal language, capable of only one meaning, anything is enacted by the Legislature, it must be enforced, even though it be absurd or mischievous. If the words go beyond what was probably the intention, effect must nevertheless be given to them. They cannot be construed, contrary to their meaning, as embracing or excluding cases merely because no good reason appears why they should be excluded or embraced. However unjust, arbitrary or inconvenient the intention conveyed may be, it must receive its full effect. When once the intention is plain it is not the province of a court to scan its wisdom or its policy. Its duty is not to make the law reasonable, but to expound it as it stands, according to the real sense of the words."¹

What is called the Literal Principle by the modern writers, is fully stated in the above extract.

1 Maxwell pp. 4—5.

Now, what is Sruti according to the Mimāṃsakas? The word Sruti has a wide meaning in Shāstric Literature as a synonym of the Vedas. But the Mimāṃsakas generally use it in a special sense. When they intend to mean the Vedas, they usually use either the term Veda or the term Amnāya.¹ They use the word Sruti when they intend to refer to a passage of the Vedas which clearly expresses its meaning and intention as soon as it is pronounced.² The Sruti is a text which requires no extrinsic aid to understand its meaning. Partha Sarathi Misra says: "When an expression is capable of application on the bare hearing of it, it is a Sruti." 'Laugākshi Bhāshkara and Apadeva define the Sruti to be "an independent pronouncement."⁴ The expression "independent pronouncement" is tantamount to the expression "independent written matter;" because the Hindus who have been interpreting rules of conduct since an age when they were not reduced to writing, naturally use the words "pronounced" and 'heard' where writers of the present time would say 'written' or 'laid down'. Thus the expression Literal construction is equivalent to the Sruti construction of the old Aryans.

The Literal construction or Sruti construction is, in fact, a principle deprecating artificial construction,

1 आमायः ।

2 यदर्थस्याभिधानं शब्दस्य श्रवणादेवावगम्यते स श्रुत्यावगम्यते श्रवणं श्रुतिः । Savara Bhashya III. iii. 14, p. 313, Jibanda's edition.

3. यः शब्दस्य श्रवणादेव विनियोगः प्रतीयते स श्रुति इत्युच्यते श्रवणं श्रुतिः । Partha Sarathi Misra's Shastradipika, p. 299, Benares edition.

4 निरपेक्षः एवः श्रुतिः । Laugakshi Bhashkara & Apadeva.

when there is really no need for it. Kumarila Bhatta would not apply the term Sruti to a sentence unless its sense is clear on the face of it. He says "The sense in Sruti is on the face of it, while the sense in a Vakya is far-fetched."¹ On this point I may well ask you to read the following observation in Maxwell's book.

"When the language is not only plain but admits of but one meaning, the task of interpretation can hardly be said to arise. It is not allowable, says Vattel, to interpret what has no need of interpretation. *Absoluta Sententia expositore non eget*. Such language best declares, without more, the intention of the lawgiver, and is decisive of it."²

According to the ancient orthodox method of sanskrit composition, a Vidhi proposition is bound to be short and simple. It would usually contain a nominative case, expressed or understood, and a transitive verb and an objective case. When there is no doubt of the meaning of the verb and the objective case, the sentence is clearly a Sruti. For instance in the text :—

Aindra garhapatyam upatishthate, "By the Mantra addressed to Indra establish the household fire."³ Here the expression 'establish the household fire' is clear and explicit in meaning, the meaning being manifest as soon as the expression is uttered. Therefore it is a Sruti. Presently you will have the discussion regarding the interpretation of this text by Jaimini and his followers.

1 मुख्यार्थः सन्निकृष्टत्वं वाक्यार्थो विप्रकृष्टता। Tantra-vartika, p. 535, Benares edition.

2. Maxwell p. 4.

3. ऐन्द्राणां गृहपत्यमुपतिष्ठते।

Before entering, however, into any discussion of this sort you ought clearly to understand the position of Sruti, Linga, Vākya and Prakarana in relation to each other. Linga, Vākya and Prakarana are all more or less, rules of interpretation of an artificial character as compared with the Sruti rule. Briefly speaking, the Linga principle is the principle of determining the meaning of a word or a clause in the light of another word or another clause, without joining that other word or other clause with it, as a part and parcel of the same sentence.¹ The extrinsic light so availed of is expressed by the phrase 'suggestive power.'² The Vākya principle is the principle of making out a proposition by reading together apparently disjointed words and clauses.³ Thus it relates to the structure of the sentence, while the Linga relates to the light, of which a word or sentence is susceptible from outside. The Prakarana again is the principle whereby a clause which is subordinate on the face of it, and which occurs isolatedly without its principal, is connected by the logic of the subject with some principal clause which is more or less in want of it.⁴

Sruti, Linga,
Vākya and
Prakaran in
relation to
each other.

Thus you see the Linga requires extrinsic light in the shape of what is suggested by something else. The

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1. यत् तावच्छब्दस्यार्थमभिधातुम् सामर्थ्यं तद्विज्ञम् । Savara Bhashya III. iii. 14.
 2. शब्दसामर्थ्यं तद्विज्ञम् । Laugakshi Bhashkara.
 3. संहृत्य अर्थमभिदधति पदानि वाक्यम् । Savara Bhashya, III. iii. 14.
 4. असंयुक्तं प्रकरणात् इतिकर्तव्यतार्थित्वात् यत् असंयुक्तं श्रुत्या लिङ्गेन वाक्येन वा तत्प्रकरणात् इतिकर्तव्यतार्थित्वात् । Savara Bhashya, III. iii. 11.
- उभयाकाङ्क्षा प्रकरणम् । Laugakshi Bhashkara.

Vākya requires the addition or insertion of some wanting links in the shape of words or clauses. And the Prakarana requires reference to an object or purpose elsewhere expressed. In all the three cases there is a want or susceptibility in the word or clause which engages your attention, and that want or susceptibility is satisfied by something outside. But what is a Sruti has no want by its definition. So when a clause or sentence that engages your attention is a Sruti *i.e.*, independent and clear in meaning, you need not resort to the other modes of construction. You will further see that when the text that engages your attention is not a Sruti *i.e.*, not absolutely clear in meaning, the next least onerous method to determine its meaning is by the light or the suggestive power of other clauses (Linga), and not by trying to reconstruct the sentence by bringing in other words or other clauses. This latter process (Vākya) should only be resorted to failing the former. Again if an object and purpose of a clause or sentence be found by either availing of some extrinsic light (*i. e.*, by the Linga) or by reading the clause or sentence with words or clauses added to it in a proper manner (*i.e.*, by the Vakya), then one should not proceed to seek its purpose and object elsewhere.

You will observe that in each of the three cases there is a want and a supply of that want, but the thing wanted is different in each. In the case of the Linga what is wanted and supplied is a certain light regarding the significance or the effect of certain words. In the case of Vakya, however, there is an expectancy *Akan-ksha* in a phrase or clause for some other phrase or clause which together with the former would express one com-

plete idea; in other words, would constitute one complete sentence. So here the want is of some words or phrase. Again in the case of Prakarana the want is that of a purpose in a clause or sentence representing a detail, while there is another clause or sentence which has the purpose but which is more or less in need of the detail.

Mr. Kunte of Bombay, the author of Saddarshana-chintanika, whose elaborate researches in the Mimāṃsā Shāstra have elicited high compliments from European scholars, has attempted to explain the above mentioned general principles of Mimāṃsā construction as follows:—

Mr. Kunte's comparative explanation of Sruti, Linga &c.

"The Mimāṃsakas define Sruti or a direct statement to be a word or a sentence which at first sight conveys its sense, about the interpretation of which no argument or reasoning is necessary, which does not necessitate the analysis of compound terms or the consideration of its etymology. They define Linga to be that which involves the consideration of the derivation and etymology of a word, and employs inference in settling the sense either of a word or a sentence. One consistent sense is conveyed to the mind by a variety of words bearing different relationships to one another, and arranged in an order prescribed by the rules of grammar. The evidential power of such a sense is exegetically called a Vākya, which we have translated by *the syntactical construction of a sentence*. It is recognised by the Mimāṃsakas as a method of proof in interpreting a passage. Why is the syntactical construction or its exegetical power considered to be a method of exegetical proof by the Mimāṃsakas? Because in interpreting a passage, it is necessary to determine

whether a given sentence is a simple or complex, single or compound, subordinate or co-ordinate, a divisible or non-divisible sentence. That method of exegetical proof which examines the relationship between different subjects treated of in a passage, which distinguishes the principal subject from those merely subordinate and conducive to its elucidation, and which determines the interpretation of a given passage is called by the Mimāṃsakas Prakarana."¹

Each of the three principles Sruti, Linga and Vākya has a two-fold application. The Sruti is either a word or a sentence the intention of which is self-evident. The Linga is either the implied sense of a word or of a sentence. The Vākya is the making out a proposition either by joining together apparently disjointed words, or by joining together apparently disjointed sentences.

LAUGAKSHI BHASHKARA'S EXPLANATION OF SRUTI, LINGA, VAKYA AND PRAKARANA.

The following is what Laugakshi Bhashkara says (the translation is Dr. Thibaut's) regarding the Sruti.

Laugakshi
Bhashkara's
explanation.

"Direct statement (Sruti, literally 'text') we define as irrespective or independent words (words which intimate their sense directly without any intermediate steps of the nature of those required by the other means of proof.)"

Laugākshi's definition of Linga is the following :

"The suggestive power of all words is Linga."² He however gives this definition as one given by some one before his time. For he introduces the definition by the remark, "As it is said." Then as regards Vākya Lau-

¹ Saddarshanachintanika, pp. 687-691.

² शब्दसामर्थ्यं लिङ्गम् । यथाहुः सामर्थ्यं सर्वशब्दानां लिङ्गमित्यभिधीयते ॥

gākshi Bhashkara shortly defines it to be 'syntactical connection.'¹

Dr. Thibaut translates the whole passage as follows :

"By sentence or syntactical connection (Vākya) we understand common employment and by this term we understand the connected enunciation of two words denoting two things which in reality stand to each other in the relation of principal and subsidiary although this is not indicated by second case affixes etc., directly indicating the one of the two things to be the thing to be accomplished by the other etc. (which relations are directly indicated by Vibhakti-Sruti etc.)"

Prakarana is defined by Laugākshi to be "the relation of interdependence between passages."²

APADEVA'S EXPLANATION OF THE FOUR PRINCIPLES.

Apadeva's explanation of the Sruti is almost identical with that of Laugākshi. So it need not be reproduced in full. He defines Sruti as "an independent pronouncement." He points out that an applicatory Vidhi is a Sruti when its applicatory character is evident on the very hearing of the words composing it.³ This may be in three ways, either by hearing the case termination, or the subject and the predicate, or a single term. Then he goes on to show that what is called *artha* of a word is its self-evident meaning, while the sense that is gathered by implication is *Lakshanartha*.⁴

Apadeva's
explanation.

1 समभिव्याहारी वाक्यम् ॥

2 उभयाकाङ्क्षा प्रकरणम् ।

3 यस्य च शब्दस्य श्रवणादेव सम्बन्धः प्रतीयते सा विनिर्णीकृता । आपदेवः ।

4 स एव हि शब्दस्यार्थो यः प्रकारान्तरेण न लभ्यते समन्वयसम्बन्धः शब्दार्थ इति

Apadeva's explanation of Linga is fuller than that of Laugakshi. He puts it as the suggestive power of ideas.¹ He shows how an applicatory Vidhi is made out by the suggestive power of ideas, and when so made out, it is implied (*kalpya*);² while an applicatory Vidhi by Sruti is direct (*pratyakshya*). You will observe one thing in what Laugakshi Bhashkara and Apadeva say regarding Linga. According to Laugakshi the suggestive power or the light which indicates the true meaning is supposed to be in the word or clause, the meaning of which is to be explained. But according to Apadeva, in fact, according to the great master Jaimini himself, it is supposed to be in the word or clause which assists the explanation, and which is distinct from the word or clause requiring explanation. But whether the suggestive power be attributed to the one or the other is of little consequence. As a matter of fact, when a word or phrase is explained in the light of another word or phrase, the explanation is effected between the two. The word or phrase which is in need of explanation may be said to have a latent power (*sakti*) to explain itself, inasmuch as it indicates a susceptibility of receiving light from outside.

Now as regards Vākya, Apadeva applies this principle to the case of an applicatory Vidhi as follows. He says an applicatory Vidhi is direct when a thing enjoined to be used is put as the objective case of the verb expressing command. But when it is not so put, as in

आयात् अतएव न गङ्गापदस्य तीरमर्थः सञ्चयैव प्रतिपत्तिरसम्भवात् ।

आपदेवः ।

1 सामर्थ्यं सर्वभावानां लिङ्गं । आपदेवः ।

2 लिङ्गादिषु मन्त्रस्यो विनियोजनः शब्दीऽपि किन्तु कल्पः । आपदेवः ।

the case of the text—he whose *juha* is made of *Parna-wood* etc.—here one has to make out by reading all the words of the text together, that the making of the *juha* is the object of an injunction. This is an instance of the Vākya principle. He says such a case amounts to reading (by importing) a command (*sheshi*) with the object of command (*shesha*)¹ Lastly as to Prakarana, Apadeva points that the object of a Prakarana is to show the manner in which an injunction is to be carried out. It cannot indicate the materials which are required for the fulfilment of the injunction. They must be indicated by a Sruti or a Linga.²

KUMARILA BHATTA'S EXPLANATION OF SRUTI,
LINGA AND VAKYA.

The following Bhattapada indicates the reason of the Sruti principle.

“To take what has a manifest sense in a larger or smaller sense is to incur the fault of attributing inferential or double sense. Therefore this is not to be supposed.”³

Again the following Bhattapada explains the enlarged meaning of the word (*nirapeksha*) ‘independent’ in the definition of Sruti—“Independent pronouncement is Sruti.”

1 समभिव्याहारो नाम साध्यसाधनत्वादि वाचकः द्वितीयाद्यभावे वस्तुतः
शेषशेषिणोः सङ्कोच्चारणं यथा यस्य पण्यमयौ जुहुर्भवतीति ।

आपदेवः ।

2 सिद्धस्य तु द्रव्यादेः केवलमङ्गत्वं तदपि श्रुत्यादिना ननु प्रकरणात् ।

आपदेवः ॥

3 श्रुयमानस्य वाक्यस्य न्यूनाधिकविकल्पने ।

लक्षणावाक्यभेदादिदीपो नानुमितेच्छसौ । Tantravartika, Ch. I.
pada 4, Benares edition, p. 291.

The Pada is this : 'A Sruti no doubt is expressive of its own meaning. Sometimes, however, it clears up what goes before. Thus though it acts for the benefit of another thing, it is by way of supplying a pre-existing want.'¹

Bhatta's discrimination between Sruti and Linga.

Now let us see how Bhatta differentiates the Linga principle from the Sruti. His interpretation of Sruti is that it is either a Vidhi or Viniyoga or an *Ukti* (either an injunction or applicatory proposition or a declaration.)² He interprets Linga as being *Shabdasya Ukti Shakti* (the declaratory force of words.)³ You find that in both these explanations or definitions there is *Ukti* (declaration). So Bhatta raises the objection that Sruti and Linga overlap each other.

The following sloka contains the substance of the objection.

"A Sruti being either an injunction or a declaration or an applicatory proposition, each of these is made out by a declaratory force of words and is not without such force. Again, take the instance of Linga in the idea of Indra (implied by the word Garhapatya) it is not without the element of Sruti in so far as a Sruti is a declaration."⁴ Therefore, says the objector, the definitions overlap and are thus faulty.

1 श्रुत्या तावत्तदर्थत्वं क्वचित्पूर्वम् प्रतीयते ।

अन्यत्राप्युपकारित्वादपेक्षामात्रपूर्वकम् ॥ Tantravartika, Ch. iii, pada 1. Benares edition, p. 669.

2 विध्युक्तिविनियोगाः ।

3 शब्दस्योक्तिः सामर्थ्यः ।

4 विध्युक्तिविनियोगा हि न विना शब्दशक्तिभिः ।

न चेन्द्रशब्दसामर्थ्यमभिधाश्रुतिवर्जितम् ॥ Do. p. 839.

Bhatta refutes the objection as follows :

"True apparently they overlap."¹

"But when you understand the proposition usually given as an instance of Sruti, *viz.*, Aindra Garhapatya etc., the understanding is not by the declaratory or suggestive power of any word, but you understand it because its meaning is self-evident. Also when you understand Garhapatya to mean Indra you do not realise this meaning by the literal principle of this Sruti."²

Further on referring to an applicatory proposition he says :

"In one case (*i. e.* in the case of Sruti) in the absence of the suggestive power, the mantra by itself operates as an applicatory Vidhi (*shesha*). In the other, the sense of this applicatory Vidhi not being expressed, the suggestive power is availed of."³

In short Bhatta explains that when a word has a clear and obvious meaning it is a Sruti. But when the meaning is realized by implication then it is the case of a Linga.

I have thought it fit to lead you through the texts of Bhatta on the subject and I shall also go through Savarswami's observations on it because some later writers take *Shabdashakti* (suggestive power) of a word to mean the obvious and clear meaning of a word;

1 सत्यमुभयव्रीभयमप्यस्ति ।

2 किन्तु न्द्रागाहं पत्यस्यनोक्ति शक्तावगम्यते ।

इन्द्राङ्गवमतिशया नाच रद्भुतिका रिता ॥ Tantravartika, Benares edition, p. 839.

3 एकव्रासति सामर्थे मन्त्रशेषीभिधीयते ।

अन्यत्रानुक्तशेषत्वं सामर्थ्यं संग्रहीयते ॥ p. 841 Do.

as when they say that the suggestive power of the word cow (*gau*) is to indicate the quality of being a cow (*gotwa*), while in reality Shabdashakti means an implied or implying meaning.

Bhatta's discrimination between Vakya on the one hand and Sruti and Linga on the other.

Bhatta next examines a similar objection to the definition of Vakya as overlapping that of Sruti and Linga. He says: "No Vākya whatever can exist devoid of the suggestive power of words, of a declaratory character and of the vicinity of other clauses." Therefore a Vākya contains Linga and Sruti as well as its own feature of being affected by collocation. This objection is further explained as follows:

"If departing from the self-evident meaning you assume '*Gārhapatya upatisthate*' to mean '*Indra upatisthate*' by applying the Linga, in either case there is Vākya; why then assume superfluous things (Sruti and Linga.)"

The answer to the above objection is found in the following sloka.

"In Vākya the sense is not cleared by suggestive power nor is it a self-evident applicatory Vidhi. Being only a proper association of terms directly perceived."

What is meant by the above passage is that a sentence which is made intelligible by Linga may be in form a Vākya and so also a sentence which is clear in meaning. But such cases are practically excluded from the

1 नहि किञ्चिदपि वाक्यं ब्रह्मसामर्थ्यनार्थाभिधानेन पादान्तरसन्निधानेन वा विना विद्यते । Tantravartika, Benares edition p. 841.

2 लिङ्गत्वमभ्युपेतं चेदिन्द्रोपस्थानकस्य ने ।

उभयत्रापि वाक्यत्वम् कथं भूयोवक्तव्यम् ॥ Do. p. 842.

3 अर्थप्रति न सामर्थ्यं न च शेषत्वमुच्यते ।

केवलं पदसंघातः प्रत्यक्षमुपलभ्यते । Do. p. 841.

Mimāṃsā conception of a Vākya according to which only the case of making out sense by examining and arranging the collocation of words and clauses is called Vākya. Accordingly it is said: "Where devoid of Linga and the like a Vākya serves to give shape to a Vidhi. Not however when joined with these it merges into nothingness." Again it is observed that "Where so-called clauses had no meaning before, to construe them into a single proposition is Vākya."² The following line from Slokavartika may be also quoted in this connection. "By Vākya you get as if a special sense by (considering) its own structure."³

I have given you so many extracts from Bhatta's work upon this point because often writers are apt to confound between the ordinary sense of the word Vākya and the peculiar sense in which Mimāṃsakas apply the term. The ordinary meaning of the term is a sentence or proposition, whether it is clear in meaning, or apt to be cleared by comparison with other passages, or whether it is so obscure in meaning as makes it necessary to read with it or into it what precedes or follows, though apparently it stands apart from them. But a Vākya according to the Mimāṃsā conception is only the last phase of a sentence or clause.

One word now from Bhatta's work regarding the difference between a Vākya and Prakarana.

1 लिङ्गादिरहिते वाक्ये तदा विधिरूपयेते ।

न कथं चिद् यदा युक्तया प्राप्तिलेशोऽपि गम्यते ॥ Tantravartika,
Benares edition, p. 919.

2 यत्तु न प्राग्वाक्यादर्थं तदेकतावधारणमस्तीति । Do. p. 426.

3 येन स्वार्थविरोधेन विशेष उपजन्वते । Slokavartika. Adhi 7,
sloka 92.

Bhatta's discrimination between Vakya and Prakarana.

A Prakarana is defined to be a passage which has a relation of interdependence with another passage. In Vakya too a clause to which other clauses are to be added in order to form a Vakya, stands in expectancy (*akanksha*) as it is called, of such other clauses. This is also a sort of interdependence. Then what is the essential difference between the two? The difference is that in a Vakya the parts are joined grammatically as members of the same sentence, whereas in the case of a Prakarana there is no such integral organic connection. Thus in many cases a Vakya is a Prakarana plus a syntactical connection.

The following Bhattapada is to the above effect :

"In Vakya there is a direct union which is not the case in Prakarana. A Prakarana is brought in by mere want, hence it is inferior to a Vakya."

The discriminating features of Sruti, Linga and Vakya explained by Kumarila Bhatta were originally pointed out by Savaraswami in his great work the Jaimini Bhāshya. Bhatta has only enlarged upon and developed them. The Swami's original observation on the topic should also be placed before you. When you have got the views of these two great masters of the Mimāṃsā Śāstra you will be able to guard yourself against being led away by any confounding texts of later writers that you may sometime come across.

Savara Swami's views on Sruti, Linga and Vakya.

The Swami explains the demarcating features of Sruti, Linga and Vakya by referring to the text : "By Indra mantra establish the Gārhapatya." This mantra

१ प्रत्यक्षा सङ्गति वाक्ये न च प्रकरणे स्यासी ।

आकाङ्क्षातोऽनुमातव्या वाचता विप्रकृष्टता । Tantravartika, Benares edition, p. 850.

is admittedly a Sruti, and as such not open to construction by the Linga principle. The Swami asks the following questions :

“What is that in it which makes it a Sruti ? What is that in it which might make it liable to construction by Linga ?”

He himself answers the above question as follows :—

“In the above, Sruti is (appreciating the sense of) the word Gârhapatya by the very utterance thereof. What again is Linga ? It is the force of the passage:—“Ever protect thou Indra and not injure thy servant.” By this force Indra is shown to be a particular diety and thus in the text in question *viz.*, “Aindra Garhapatyam upatisthate” Garhapatya might mean Indra.”¹

“Now what is Vākya ? It is a number of words (or expressions) collectively making out a proposition.”²

Then the Swami goes on to say :

“If this be the definition of Vākya then the text “By Indra-mantra establish the Gârhapatya” is also a Vākya. So also is the text—“even protect thou Indra and injure thy servant.”³ He then proceeds to explain that the above two texts should not be treated as Vākyas,

1 का पुनः अत्र श्रुतिः ? किं लिङ्गम् ? Savara Bhashya, III.
iii. 14.

2 श्रुतिर्गाहपत्यशब्दवचनम्, लिङ्गं पुनः, कदा च नक्षत्रौरसि नेन्द्रसचसि दाक्षुषे इति इन्द्रशब्दस्य विशिष्टदेवताभिधानसामर्थ्यम् । Do.

3 अथ किं वाक्यं नाम ? संज्ञित्य अर्थसमिदधति पदानि वाक्यम् । Do.

4 यक्षे वमिदमपि वाक्यम्, एन्द्रा गाहपत्यमुपतिष्ठते इति, इदमपि, कदा च नक्षत्रौरसीति । Do.

although they are Vakyas according to the usual idea. He says: "Generally speaking the above texts are Vākyas in as much as they consist of a collocation of words, all and each of which make out the sense. You are however to differentiate them, one as a Sruti-Vakya and the other as a Linga-Vakya and are thus driven to find out the difference between a Sruti and Vākyā, and a Linga and Vakya."¹

"This difference is stated as follows: That power of words which (apart from its manifest sense) tends to lend expressiveness (to other words) is Linga. Where the communication of the sense takes place from the bare utterance, this is called Sruti; to hear is to understand by hearing."²

Thus the Swami distinguishes between a Sruti-Vakya and a Linga-Vakya; and he suggests that of the two texts one is a Sruti-Vakya and the other a Linga-Vakya. The Swami however does not clearly explain what a Vākyā proper is apart from a Sruti-Vakya and a Linga-Vakya. This however has been very fully explained by Kumārila Bhaṭṭa.

Udichya
Bhaṭṭa-
charya.

Udichya Bhaṭṭacharya's work called Adhikarana Kaumudi is a well-known Mīmāṃsā work. His Adhikaranas however like those of Madhava Acharya's Nayamalavistara are more with an eye to the practical ceremonial questions of the day than with abstract questions of interpretation. Udichya

1 सम्यग्वापि संज्ञित्य अर्थमभिदधति पदानि, तेन वाक्यास्य चैषा संप्रधारणा, न श्रुतिलिङ्गयोः, यदि वा श्रुतिलिङ्गवाक्यानि विवेक्तव्यानि, इदं श्रुतिवाक्यायोः अन्तरम्, इदं लिङ्गवाक्यायोः इति। Savara Bhashya, III. iii. 14.

2 तदभिधीयते, यत् तावच्छब्दस्यार्थमभिधातुम् सामर्थ्यम्, तल्लिङ्गम्, यदर्थस्य अभिधानं शब्दस्य अर्थस्य भावादेवावगम्यते, स श्रुत्याऽवगम्यते, यवच्च श्रुतिः। Do.

Bhattacharya takes a Sruti to be the operative part of a Vidhi proposition describing in clear terms the thing to be done by means of the second case termination. This is a too narrow view of Sruti, and Udichya Bhattacharya himself shows the narrowness of the above idea of Sruti by quoting the definition of it by Vachaspati Misra which is as follows :

“A Sruti includes all case-terminations, each conveying its proper meaning and expressing a clear sense of the proposition without extrinsic help.”¹ There is nothing worth noticing in Udichya Bhattacharya's exposition of Linga and Vākya.

I have now given you a general indication of the four great principles of Mimāṃsā interpretation. In fact as the whole range of Vedic texts is divided, with reference to the nature of the matters contained in them, into (1) Vidhi (positive and negative) (2) Arthavāda and (3) Namadheyas, the contents of the Vedas may with reference to the manner of expression, be divided first into rules and propositions directly expressed, and rules and propositions constructively made out. The constructive portion again may be subdivided into :

Classifica-
tion with
reference to
matter and
manner.

(1) Rules and propositions made out by way of Linga or construction with reference to the suggestive power of words and expressions.

(2) Rules and propositions arrived at by adjustment of syntactical relations or by the Vākya principle.

(3) Rules and propositions got by an adjustment of the purpose indicated by one passage with reference to that indicated by another passage both tending to

1 वाचस्पतिमिश्रास्तु कारकविभक्तिमात्रं श्रुतिः सर्वसामेव विभक्तीनां प्रकृत्य-
यान्वितं स्वार्थबोधेन निरपेक्षतादिसत्वमिति वदन्ति ।

one transaction ; that is to say, by the Prakarana principle.

Thus as the contents of the Vedas are divided into Vidhi, Arthavada etc., according to the one classification, they are divided, according to the other classification into, Sruti proposition, Linga proposition, Vākya proposition and Prakarana proposition. This latter classification holds good not only with reference to the Vedas but also with reference to the Smriti works. In the Smriti works as well as in the Vedas, the propositions directly expressed are not many; specially in the Vyavahara portion of the Smritis. Great many propositions of an important character have to be made out constructively as the labours of the digest writers prove.

I should tell you here that in the case of some propositions you may have the support of all the four principles of interpretation, or more than one of them. Where, however, the result of one principle tends in one way and that of another in an opposite way, effect should be given to the Sruti principle in preference to all the others ; and so the Linga principle in preference to Vākya and Prakarana ; and Vākya in preference to Prakarana. This I have already stated before, and I will have to consider it more fully with reference to Jaimini's seventh Adhikarana of ch. iii, BK. III, which is expressly directed to the topic of comparative preference of one or other of the several principles of construction.¹

Now I shall proceed to deal with each of the four general rules separately in detail.

1 श्रुत्यादीनां पूर्वपूर्ववर्तीयलाघिकरणम् । Jaimini III. iii. Adhi 7.

Section III. Each of the four principles separately dealt with in detail.

I. THE SRUTI PRINCIPLE.

The superiority of the Sruti to the Linga is discussed at length by the commentators in relation to the interpretation of the text already referred to *viz.*

“Aindrā Gārhapatyam upatishthate.”¹

The result of the discussion of the subject is the Gārhapatya maxim. This maxim lays down that where the predicate of a proposition is a Sruti; as for instance, Gārhapatyam in this text, that is, where it is clear and unambiguous in meaning, the fact that a subordinate word in the sentence raises doubts to the reader is no ground for interfering with the plain meaning of the Sruti. The question arises thus:

The first word in the text is ‘Aindrā’, which means “by means of the Mantra addressed to Indra”; and the concluding words are ‘Gārhapatyam upatishthate,’ “establish the household fire-god.” But how is it reasonable to worship the household fire-god by a Mantra addressed to Indra? So the opposite party suggests that you must not take the word Gārhapatya in its plain and clear sense of ‘house-hold-fire-god’ but take it to mean Indra, as Indra resembles the fire-god and is fit to be invoked and worshipped by the Linga (suggestive power) of another text, which runs as follows:

“Kadachana starirasi nendra saschasi dashushe” (Thou Indra ever preserve us and not destroy your followers). Jaimini says that the text being a clear *vachana* (expression), the word Aindri cannot prevail.²

1 ऐन्द्रागार्हपत्यमुपतिष्ठते । Taittiriya Samhitā (4. 2. 5. 4.)

2 वचनादुपपत्त्यर्थमेन्द्रीत्यात् । Jaimini III. ii. 3.

For, he says, it is only a subordinate expression, it cannot affect the meaning of the operative expression which is clear on the face of it.¹

The effect of the maxim is this. There is the text in which there is no ambiguity as to the meaning of the principal word and there is no doubt as to its intention; but the idea of worshipping one god with a mantra addressed to another is not consistent with reason. Therefore the interpreter wants to get rid of this inconsistency. But, as Maxwell observes that a clearly expressed intention cannot be modified on account of any unreasonableness. Likewise the great ancient Hindu interpreter objects to the interference much on the same ground. It will be observed that this maxim is not so much to illustrate what a Sruti is, as to show that where the Sruti principle and the Linga principle are both applicable tending to opposite results, the Sruti principle is to prevail. In the discussion regarding the interpretation of the text, the opposite side relies upon the Linga principle and the author upon the Sruti principle, and as the Sruti principle is applicable, the Linga goes out.

Jaimini emphasises the importance of the Sruti principle in various places among others, in sutra 41, Ch. i, Bk. IV, where he says :

"When there is an (express) text, considerations of reasons are of no avail."²

The Sruti or Literal principle is expressed by

¹ गुणाहाप्यभिधानं स्यात् सम्बन्धस्याशङ्क्यत्वात् । Jaimini III. ii. 4.

² वचने हि हेतुसामर्थे । Jaimini IV. i. 41.

modern Shastric writers by the following short popular saying :

“As the expression so the thing expressed.”¹

Colonel Jacob takes this maxim to mean that you should understand up to the limit of the power of expression and neither more nor less. Even this view of the meaning of the maxim would show that it points to the principle of literal interpretation as understood by modern authors. This maxim occurs twice in Bhāmati. Anandagiri quotes this maxim in his commentary on Brahmasutra IV. iii. 4.

The most ordinary instances of Sruti are texts like the following :

“*Swargo kamo agnihottram juhuyat.*”²

“*Swargo kamo darsa purnamashabhyam yajeta.*”³

A Sruti however need not necessarily be a Vidhi. An Arthavada or a Guna Vakya may be as well a Sruti. Kumarila Bhatta and other writers explain this.

A Sruti requires no construction. But it becomes the key of construing other texts which not being so clear and unambiguous want construction. When the meaning of a passage is determined with the aid of another passage which is a Sruti, strictly this is construction by Linga. But it is not called so, the term Linga being reserved for those cases only in which the passage which throws light is not a Sruti. Where such a passage is a Sruti the construction is regarded to be by the Sruti principle. In this way Srutis are made to bear upon

Sruti serves to explain other passages.

1 यथावचनं हि वाचनिकं ।

2 स्वर्गकामो अग्निहोत्रं जुहुयात् ।

3 स्वर्गकामो दर्शपौर्वमासाभ्याम् यजेत ।

other texts to remove doubts not so much as to the meaning of these latter texts as to the mode in which they are to be applied. Examples of this are numerous. In Sutra 24 Ch. i, Bk. II, it is said "*by joining with the Sruti* a certain class of passages is invested with the Apurva sanction in the way of a Prakarana."¹ In Sutra 5, Ch. ii, Bk. II, the objector arguing "that those Prakaranas which are said to refer to the Purnamasi are really in the nature of general clauses (Gunas) *by virtue of a Sruti*."² In Sutra 2, Ch. iv, Bk. II, with regard to the question whether the text "Agnihotra should be performed life-long" enjoins perpetual performance of the Yaga or from time to time, *an appeal is made to another Sruti* settling the question in favour of the latter meaning.³

It is useless to multiply instances of this kind. It is self-evident that when an authoritative proposition is found in clear and explicit language, it naturally becomes the guiding principle in removing doubts in other doubtful cases.

Expressions
Sruti, Linga
&c.,
replaced by
other
expressions.

In our present digests on Hindn Law the expressions Sruti, Linga, Vakya and Prakarana are not usually used; but the authors of these digests nevertheless follow the same principles only under different designations. Jimutavahana, for example, practically proceeds on the basis of the Sruti principle in para. 29, Ch. 1, wherein he addresses his opponents as follows :

"Therefore, the text of Manu must be argued [by

1 अपि वा श्रुतिसंयोगात्प्रकरणे श्रुतिशंसतौ क्रियोत्पत्तिं विदध्याताम् ।
Jaimini II. i. 24.

2 गुणस्तु श्रुतिसंयोगात् । Jaimini II. ii. 5.
कर्तुं वा श्रुतिसंयोगात् । Jaimini II. iv. 2.

you] to intend the prohibiting of partition, although the son's right subsists during the life of the father. But that is not maintainable. For it would thus *bear an import not its own.*"¹

Jimutavahana means to say that in the text of Manu the words "they have not power over it, while their parents live"² clearly and distinctly import that the sons have no right during the life-time of their father. If you ignore this, you are guilty of violating the Sruti principle of interpretation.

The same author uses the expression Lakshana Artha as corresponding to Linga and the expression Upalakshana as corresponding to Prakarana. This will be shown hereafter.

2. THE LINGA PRINCIPLE.

Now I proceed to explain to you the Linga principle in detail. Maxwell after enunciating and illustrating the literal principle goes on to say.

Modern ideas corresponding to the idea of Linga.

"The foregoing elementary rule of construction does not carry the interpreter far; for it is confined to cases where the language is precise and capable of but one construction, or where neither the history or cause of the enactment, nor the context, nor the consequences to which the literal interpretation would lead, show that that interpretation does not express the real intention."

"But it is another elementary rule, that a thing which is within the letter of a statute is not within the statute unless it be also within the real intention of the Legislature, and the words, if sufficiently flexible, must

1 अतो जीवति सत्यपि पुत्रानां स्मृत्यै विभागनिषेधार्थं मनुवचनं वाच्यं तच्चान्वाद्यं अमार्थपरत्वापत्तेः । Dāyabhaga Ch. I. para 29.

2 अनीशास्ते हि जीवतोः । Manu IX. 104.

be construed in the sense which, if less correct grammatically, is more in harmony with that intention. Language is rarely so free from ambiguity as to be incapable of being used in more than one sense; and to adhere rigidly to its literal and primary meaning in all cases would be to miss its real meaning in many. If a literal meaning had been given to the laws which forbade a layman to "lay hands" on a priest, and punished all who drew blood in the street, the layman who wounded a priest with a weapon would not have fallen within the prohibition, and the surgeon who bled a person in the street to save his life, would have been liable to punishment. On a literal construction of his promise, Mahomed II.'s sawing the Venetian Governor's body in two, was no breach of his engagement to spare his head; nor Tamerlane's burying alive a garrison, a violation of his pledge to shed no blood."¹

Considerations stated in the above passage open the door to rules of construction less strict and more critical than what is called the rule of Literal Construction. In fact, considerations like the above naturally introduce the *Linga*, *Vākya* and the *Prakarana* principles.

The Literal principle is one of loyalty and faithfulness. The other principles are based more or less on critical reasoning. In the world of law loyalty is of greater importance than critical reasoning, so the Literal Construction has the first place, and then come the others.

It will be observed that in order to construe satisfactorily the laws to which Maxwell refers in the above

¹ Maxwell, 3rd edition pp. 26—27.

passage, viz., the law forbidding a layman to "lay hands" on a priest and that providing punishment for all who "drew blood in the street", one should depart from the strict meaning of the word "lay hands" in the one law and "drew blood" in the other. The meaning of these words should be construed with reference to the context, according to which "lay hands on" would include "wounding and beating" and the words "drew blood in the street" would mean causing bloodshed against one's will, and would not include causing bloodshed by a surgeon. Such a construction results from what the Mimāṃsakas call the suggestive power of words and expressions. So, in the language of the Mimāṃsakas, the passage referred to by Maxwell should be construed by the Linga principle.

As the word *Sruti* has two meanings, one a wide and general meaning to signify any text of the Vedas and a special meaning expressive of the Literal principle of construction, so the word *Linga* has also a double sense—a general sense and a special Mimāṃsā sense. In the general sense it means a peculiar sign which is invariably connected with a substance so that the former indicates the latter. In short, in the general sense it is the middle term of a syllogism. But in the Mimāṃsā sense it means *the suggestive power of words and ideas*. Usually it is defined simply as being the suggestive power of words.¹ It is also defined by some more comprehensively, as the suggestive power of ideas.² It will be seen that the author of the *Sutras*

Double
meaning of
the word
Linga.

1 सामर्थ्यं सर्वशब्दानां लिङ्गमित्यभिधीयते । Laugakshi Bhashkara.

2 सामर्थ्यं सर्वभावानां लिङ्गमित्यभिधीयते । Apadeva.

uses the word *Linga* in the latter comprehensive sense. (See Jaimini, Sutra 27, ch. I, Bk. III, and Sutra 1, ch. ii, Bk. III.)

The usual illustrations of the *Linga* principle will show that the *Linga* is really of two kinds :

(1) When the ambiguity and the doubt regarding the meaning and effect of a word or a sentence is removed by the suggestive power of some particular word or words in the sentence itself.

(2) When such ambiguity and doubt are removed by the suggestive power of some other passage which bears upon it.

Apadeva's
larger view
of *Linga*.

Accordingly Apadeva says: "*Linga* is of two kinds—that which depends on some extrinsic evidence having a relation with the passage in question and that which is independent of such extrinsic help."

He then explains that in the case of the text "*Barhi devasadanam dami*" (I cut the grass for making a seat for the gods), the suggestive power which points to the word "*dami*" being used in the sense of cutting, proceeds from a *Prakarana* of the *Darsapaurṇamāsi Yāga*.¹

Jaimini himself differentiates *Linga* from *Artha*; the former being the *indicia* of a passage found in another passage, and the latter being more or less its ordinary meaning or purpose. Its *indicia* or suggestive power as found in another passage coupled with its own

1 तच्च लिङ्गं द्विविधं सामान्यसम्बन्धबोधकप्रमाणान्तरापेक्षं तदनपेक्षञ्च ।

Mimansa Nyaya Prakash, Jibananda's edition, p. 19.

2 अतोऽवयवप्रकरणादि सामान्य सम्बन्धबोधकं स्वीकार्यं

Mimansa Nyaya Prakash, do.

purpose becomes, as it were, a gloss on itself. The Sutra runs as follows:

“The Linga of a passage (found in another passage) being joined with its purpose becomes a gloss on it.”¹

Sree Bhatta Sankara in his work called *Mimāṃsā Bālaprakāśh* similarly explains the dual character of Linga. He further says that where the suggestive power of the words of a sentence by themselves explains the meaning, Linga is aided by *Ekavākyatā*, that is, by calling into requisition the *Vākya* principle. In the *Sutras* most of the examples of Linga are examples of the class in which the suggestive power of words and clauses outside the passage in question, is utilised.

Bhatta
Sankara's
view of
Linga

Kumarila Bhatta in his *Sloka-vārtika* uses the word Linga to denote the matter which suggests the meaning, and the word “Lingi” to denote that of which the meaning is suggested. And he says that Linga (that which suggests the meaning) must not be an imaginary thing but some fact which is directly perceived.

Bhatta's
analysis
of Linga
and Lingi

“Where one to whom a consciousness of the suggested meaning of words arises from the suggestive power of some other matter of which one is conscious by direct perception, for such a one there is nothing more to be desired.”²

“Even in a case where the consciousness of the suggested meaning of certain matter is due to the suggestive power of a matter which is inferred, the in-

1 यस्य लिङ्गमर्थसंयोगादभिधानवत् । Jaimini I. viii. 2.

2 प्रत्यक्षाऽवगताङ्गिङ्गा यस्य लिङ्गमिति भवेत् ।

ference of the existence of the suggestive matter must be based on facts directly perceived."

Here clearly the meaning of one word or sentence is determined by the meaning of another word or sentence. There are cases however in which the known meaning of a word suggests another analogous meaning of it from the context.

The discussion regarding Sruti and Linga in the case of the text "Aindra Gârhapatyam Upatishthate" clearly shows what 'Linga' is. Gârhapatyā is a household sacred fire and the word Upatishthate means establishing fire. This being so, there can be no doubt that the word Gârhapatyā means the sacred fire called household sacred fire. This is the Sruti meaning of the expression. But the word Gârhapatyā may betaken to mean Indra in the following way. There is a Mantra, "*Kada chana starirasi nendrasaschasi dashushe,*" (Thou Indra ever preserve and not distroy us) indicating Indra to be a household deity, and we have in the text in question the word 'Aindra' (by means of a certain Mantra appertaining to Indra). Therefore it may well be said that by the suggestive power of the Mantra "*Kada chanastarirasi, etc.,*" the word Gârhapatyā in the text means Indra. In this case the text "Aindra Garhapatyam Upatishthate" is the Linga (the matter, the

तस्य नातोऽधिकं किंचित्प्राशनीयं प्रसज्यते । Slokavartika,
Anuman chapter, sloka 169.

1 यत्राप्यनुमिताङ्गिहान्निङ्गिनि वदुषं भवेत् ।
तत्रापि मौलिकं लिङ्गं प्रत्यक्षादवगम्यते ॥

Slokavartika, Anumana chapter, sloka 170.

2 कदाचन सारौरसि नेंद्रससि दासुषे ।

meaning of which is suggested), and the Mantra "Na starirasi etc.," is the Linga.

The Linga principle of construction is usually illustrated by what is called the *Barhi Nyaya* (grass maxim).¹

The text concerned in this maxim is the following :—

"Oh grass, I *dami* (do some thing) for making a seat for the gods."² The first doubt regarding the meaning and force of this text is this. Is it merely the direct report of an address made by a votary, or is it an applicatory injunction enjoining a duty? As regards this question, it is answered by the Mantra-Linga maxim which lays down that although a mantra (hymn) is a vocative declaration, the declaration has a suggestive power which goes to show that the purpose of it is to lay down an applicatory Vidhi. Jaimini In Sutra I, Ch. ii, Bk. III, distinctly lays down the above proposition³. In the present case, cutting grass for making seats for gods, is a prakarana of the Darshapurnamasi Yajna, and this is indicated by the suggestive power of the texts relating to that Yajna.

The next question with regard to the text is, and this is the most important question, what is the duty enjoined by it? What is to be done, in other words, what is the meaning of the word *dami*. It is doing something with respect to the preparation of a seat for the gods. But what is the precise character of the act? In order to determine this, the precise meaning of the word *dami* must be determined. This can only be

Barhi maxim, an illustration of Linga principle.

1 बर्हिःन्यायः।

2 बर्हिदिवसदनं दामि।

3 अथानिधानमन्यान्मन्त्रेषु श्रवणमात्रं स्वातन्त्र्यादुत्पत्तिस्तन्मन्त्रोऽर्थेन निवृत्तसंयोगात्। Jaimini III. ii. 1.

determined by ascertaining first the meaning of the word *Barhi*, as it is to *Barhi* that the address is directed. The meaning of the word *Barhi* being ascertained it will serve as the Linga to the meaning of the word *dami* and the force of the whole text.

The word *Barhi* has two meanings (1) *Kusa* grass (2) *Ulapa* grass. If it mean *Kusa* grass then the meaning of the word *dami* will be 'I cut' and the meaning of the whole sentence will be 'I cut *Kusa* grass to make a seat for the gods.' If *Barhi* mean *Ulapa* grass the sentence will have another meaning. Therefore the first question is to settle this point. The authorities settle it that *Barhi* must be taken to mean *Kusa* grass, for that is its primary meaning, the other meaning being only secondary.

You will see that Kumarila Bhatta lays down that what is to be used as a Linga to throw light on the meaning of another word or clause, must itself be a thing either directly perceived or it must be a thing clearly established by reason. So here in order to use the word *Barhi* as a Linga it is properly taken in its primary sense and not in any secondary or figurative sense. Thus the result is that the text means—'I cut *Kusa* grass to make a seat for the gods.' Therefore cutting *Kusa* grass is the duty imposed by the mantra.' If *Barhi* had meant *Ulapa* grass then probably *dami* would not have meant 'I cut.'

Laugakshi Bhashkara's explanation of the *Barhi* maxim is perhaps not so clear as that of Apadeva from

। तेनाह्वयं यथा बहिर्देव उदनं दामोदरस्य जयचक्रं उदितं
यजमानवितुम् उच्यते । Mimamsa Nyaya Prakasha, p. 19.
Jibananda's edition.

whose work I have made the last quotation. Apadeva says the effect of the meaning of the word *Barhi* being Kusa is, that the act of cutting is the object of the applicatory Vidhi (labanangatwam), and the word *Barhi* is capable of manifesting the sense of *dami* to be cutting (labana prakashayitum samrathah). Laugakshi Bhashkara, however, puts the conclusion of the maxim to be as follows: "By this the force of the Mantra is shown to be that Kusa is to be cut and not Ulapa. By the Linga thereof (i.e. of *Barhi*) it has the suggestive power of showing that it is to be cut."¹

Laugakshi's
explanation
of *Barhi*
maxim.

The last sentence is clearly intelligible that the suggestive power of the word is to clear up the meaning of the word *dami* to be 'I cut.' But the first sentence is not clear upon the point. Laugakshi has another passage in which he seems to take a rather narrow view of the scope of Linga. He says: "Suggestive power is like the conventional sense of words, it being different from an etymological sense. The sense of compound words (deriving their meaning from the component parts) being different from Linga words which are based on conventional meaning."²

The way in which modern English text writers on interpretation discuss the question of conventional and technical sense of terms may be interesting in this connection.

Maxwell on
the technical
meaning of
words.

-
- 1 तेन बर्हिदेव सदनं दामीति मन्त्रस्य कुशलवनाङ्गत्वं नतु उलपादि
लवनाङ्गत्वं तस्य बर्हिदामीति लिङ्गात् तद्वचनं प्रकाशयितुम् समर्थात् ।
Artha Sangraha, p. 69, Jibananda's edition.
- 2 सामर्थ्यं रुदिरिव तेन समाख्यातो भेदः ।
यौनक शब्द समाख्यातो कदाचन लिङ्गशब्दस्य भिन्नत्वात् ॥
Artha Sangraha, p. 38. Jibananda's edition.

Maxwell says: "The words of a statute are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the Legislature has in view. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used and the object to be attained."

Pranabhrīt
maxim.

The principle of Linga is illustrated by Jaimini in numerous Sūtras and Adhikaranas. In what is called the Pranabhrīt Adhikarana² which is based on Sūtra 28, Ch. IV, Bk. I, it is shown how words acquire a purely conventional meaning by the Linga process. In Taittiriya Sāmhita (5.3.1.2) there is a passage: "He disposes the Prānabhrīt."³ Again in the same Sāmhita (5.7.2.5) there is a similar passage: "He disposes the Ajyāni".⁴ Now what is the meaning of Prānabhrīt in the one case and of Ajyāni in the other. The words Prānabhrīt and Ajyāni are respectively the names of two Mantras or verses which begin with those words. These verses are used in consecrating bricks required for certain purpose. From this fact the bricks consecrated by the Prānabhrīt Mantra acquired the name of Prānabhrīt. Similarly the bricks consecrated by the Ajyāni Mantra acquired the name of Ajyāni. But in course of time the whole heap of bricks

1 Maxwell, 3rd edition, p. 74.

2 प्राबभृदादिशब्दानां सुव्यर्थताविवेकः । Jaimini I. iv. 17 Adhi.

3 प्राबभृत उपदधाति ।

4 आज्यानीरेता उपदधाति ।

of a particular kind came to be called Prānabhrit; because one or two bricks of that heap were consecrated as Prānabhrit bricks. Thus the instance of Prānabhrit becomes a maxim for extending the scope of a name in the above manner. And the instance of the Prānabhrit and that of Ajyāni being similar, each supports the other. In fact, the meaning of the words Prānabhrit and Ajyāni in these cases is determined by the peculiar association of the words and by the context of the passages in which they are used. So, such a use is called Lingasamabāya (embodiment of the Linga).

Nanda Pandit, in his work on Dattaka Mimāṃsa, refers to the Prānabhrit maxim to show that although the word 'substitute' was first applied in express term only to five descriptions of son, the word by general use is applicable to all the twelve descriptions.

I have already stated that Linga not only implies the suggestive power of words, but also the suggestive power of ideas or rather of association of ideas. The Prānabhrit maxim is an illustration of a Linga of the latter class.

As I have already told you, later writers in applying the Linga principle do not use the term Linga; but instead of it they use the word Lakshana Artha, which Jaimini himself identifies with Linga. This latter word Lakshanā Artha is distinctly used in the same sense as Linga by Jīmatavāhana. In section 3, chapter IV Jīmatavāhana has to construe a text of Yājñavalkya in the light of the suggestive power of another text of Manu and in this connection he uses the word Lakshana Artha; he also uses the word Lakshana in the sense

Linga corresponds to
Lakshana
Artha.

of suggestive power, in paras. 17 and 18, Sect. ii, Ch. IV, in which he discusses the question whether interpretation by the suggestive principle is applicable to the case which he was considering in those sections. What Mr. Colebrooke translates by the word 'metaphorically' should be translated by the word 'suggestive power,' the original word being *Lakṣhanā*.

Eternity of
the Vedas
by Linga
principle

The Linga principle of construction is often availed of, in constructing an apt proposition on a point on which there is no express proposition but on which there should be one. Even on such a cardinal question as that regarding the eternity of the Vedas, there is no direct proposition in the Vedas themselves. Jaimini invokes the aid of the Linga principle in support of the proposition that the Vedas are eternal. There is the following text in *Rik Samhita* V. 76.5 :—

"Oh Virupa by speech which is eternal!"

With reference to this text the Rishi argues that, among others, by the Linga principle the eternity of the Vedas is established. See Sutra 23, Ch. I, Bk. i. For the eternity of speech being assumed in the above text a proposition asserting it can positively be constructed. In fact, the digest writers have been driven to the necessity of forming constructive rules on some of the most essential points of the law of succession and inheritance, because the old law-givers had omitted to lay down any express rule on such points.

Construction
by Linga,
Vakya, etc.,
resorted to
by digest
writers.

The authors of the Dharma Shastras, for instance, did not enunciate any clear and absolute rule as to when the right of proprietorship vests in a son or sons in property belonging to the family. The digest writers were called on to arrive at a conclusion on the point ; but as there was no text of the nature of *Sruti* regarding

the question, they were obliged to resort to rules of construction, such as *Linga*, *Vākya* &c. in order to construct a definite rule on the subject.

No doubt, in the passage "after the [death of the] father and mother, the brethren being assembled, must divide equally the paternal estate: for they have no power over it, while their parents live," *Manu* asserts the proprietary right of the father during his life-time; but this is but an indirect proposition. A literal construction of it does not conclude the question, specially as there is the text of *Yājñavalkya* with some other such similar texts to the effect that neither the father nor the grandfather is master of the whole immoveable estate. But such texts also are not explicit and direct on the point. Hence both *Vijñāneswara* and *Jimutavāhana* had to resort to the various critical rules of construction in order to settle the points. Although these two authors arrive at different conclusions, the process by which they worked out the question is of the same character. This process, in short, involves what *Jaimini* called *Linga*, *Vākya* and *Prakarana*.

Vijñāneswara
and *Jimutavāhana*,

3. THE VAKYA PRINCIPLE.

Vākya cited as a rule of construction is not exactly the same thing as a *Vākya* in its usual sense of a proposition or sentence. It is defined by *Jaimini* himself as follows:

"The unity of idea constitutes the unity of a *Vākya*; if it be divided, then one part becomes, as if pressing for another."

Vākya
defined
and illustrat-
ed,

He explains that *Vākyas* (propositions) become different, when one co-ordinate proposition begins and another ends.

१ अर्थकलादेकं वाक्यं साक्षात् चेद्विशानेत्यात् । *Jaimini* III. iii. 44.

"In the case of co-ordinates, there is division of a Vākya (proposition)."

A subordinate sentence, that is, a Guna Vākya or an Arthavada, forms one sentence with the principal proposition. In fact, a Vākya may be a simple sentence or a complex sentence. Accordingly some Mimāṃsā writers speak of two classes of Vākyas, ordinary Vākyas and Maha-Vākyas. A Maha-Vākya practically would correspond to a section or paragraph as we find them in modern books. In the ordinary sense of the term Vākya, all sentences are Vākyas whether the sentence is one governed by the Sruti principle or one governed by the Linga principle, or it is one governed by neither of these. So Savara Swami says that each of the following is a Vākya.

(1) "*Aindra Garhapatyam Upatishthate*" Establish the household fire by means of the Mantra addressed to Indra viz., *Nivashana sangamano vishunam* (conduct them to their houses and wealth).

(2) *Kadachina starivasi nendra saschi dashushe* (Oh Indra! do not be destroyer but do acts to benefit the votary.)

The one is a Sruti-Vākya and the other is a Linga Vākya. The former is a Sruti because the word *Garhapatya* being the principal word in it and being clear in meaning, it makes the whole Vākya clear in meaning. And the latter is a Linga, because, by means of it, you want to make the word *Gārhapatya* mean *Indra* which is not its literal meaning.

१ सनेषु वाक्याभेदः स्यात् । Jaimini II. ii. 45.

The point for consideration is, what is Vākya as a principle of construction? It is the process by which syntactical connection between one word and another, and between one clause and another is fully determined where such connection is not clear on the face of it. Laugakshi Bhashkara defines Vākya to be Samavi-byahara' (putting together). He says:—"It means the connected enunciation of two words denoting two things which, in reality, stand to each other in the relation of principal and subsidiary, although this is not indicated by second case affixes etc., directly indicating the one of the two things to be the thing to be accomplished by the other etc. (which relations are directly indicated by Vibhakti-sruti etc.)"² (Dr. Thibaut's translations.)

Vākya principle discussed in detail with illustration.

The above passage is rather obscure. But it sufficiently indicates that the real gist of the Vākya principle is to find out a grammatical relation which is not apparent on the face of it. Where the grammatical relations of a sentence are clearly explicit and further the meanings of the words are also clear, the case would fall under the head of literal construction.

Bhatta's explanation of Vākya in his note on Sutra 23. ii, II, has already been referred to. According to his explanation, Vākya is practically an obscure sentence, the sense of which has to be cleared up by reasoning.

Vākya really corresponds to what is indicated by Maxwell in the following passage :

"But it is another elementary rule, that a thing

1 समविश्याहारी वाक्यम् ।

2 समविश्याहारस्य साध्यत्वादिवचकद्वितीयस्य भावेऽपि वक्तुं तः शेषः शेषः वाचकपदयोः सहोच्चारणम् । Laugakshi Bhashkara.

which is within the letter of a statute is not within the statute unless it be also within the real intention of the Legislature, and the words, if sufficiently flexible, must be construed in the sense which, *if less correct grammatically is more in harmony with that intention.*"¹

Maxwell suggests the necessity of making in some cases a deviation from the ordinary grammatical rules. The Mimāṃsakas, no doubt, do not say so. But they point out the necessity of combining words and clauses in an order different from that in which they present themselves, thus justifying an alteration of the actual syntactical connection.

In the Adhikarana called Sandigdharthanirupāṇadhikaranam² Jaimini lays down :

"In cases of doubt, the solution is by reading into the passage what forms the sequence of it".³

There is the text. "He places besmeared pebbles of sandstone."⁴ Then follow the words, "Ghee is indeed light."⁵

In the above passage one does not know what is the meaning of besmeared pebbles. With what are the pebbles to be besmeared? This difficulty is removed by the succeeding clause which speaks of Ghee. So it must be understood that the pebbles are besmeared with Ghee. Here you will observe that in order to make the meaning of the passage clear, it is not only necessary to

1 Maxwell, 3rd edition, pp. 26—27.

2 सन्दिग्धार्थ निरूपणाधिकरणम् । Jaimini I. iv. 18 Adhi.

3 सन्दिग्धेषु वाक्यशेषात् । Jaimini I. iv. 29.

4 शर्करा चक्रे उपदध्यात् ।

5 तेजो धृतं । Taittiriya Samhita 3, 12, 5, 12.

utilise the term *Ghrīta* in connection with the term *akta*¹ (besmeared or annointed, but also to supply the word *ghritena*² (by ghee) before the word *akta*.

That the Vākya principle may involve the introduction of some variation in the structure of the sentence, is also clear from the example usually given to illustrate this principle. The example usually given is that with regard to the following text :

"He, whose sacrificial ladle is made of *Parna* wood, hears no evil sound." Laugākshi Bhāshkara makes the Vākya principle bear upon this text in the following manner : (Dr. Thibaut's translation.)

"The passage 'he whose sacrificial ladle is made of *parna* wood hears no evil sound.' Here we see from the manner in which the words *parna* wood and ladle are joined, that the ladle should be made of *parna* wood. Nor is it to be said that the circumstance of being made of *parna* wood is purposeless as the ladle could be made also in a different way (*i e.* from some other kind of wood). For the word ladle intimates at the same time the peculiar transcendental result to be accomplished by it (as a ladle made of *parna* wood). So that the sense of the passage is "By its being made of *parna* wood, he is to realize the peculiar transcendental result connected with the ladle, by means of carrying in it the oblation, after it has been taken out of the vessel (by *avadāna*.) As it thus appears that if the ladle is made of *parna* wood, then the transcendental result to be brought about by it ensues and

1 & 2 अक्ता । घृतेन अक्ता ॥

3 यस्य पर्जनयो जुहुर्भवति न स पापं श्लोकं वृषोति । Laugākshi Bhāshkara, p. 7.

not in any other case ; the circumstance of its consisting of *parna* wood is not purposeless. The phrase "by means of carrying in it the oblation after it has been taken out of the vessel by *avadana*" (*i. e.* the last clause of this phrase) is necessarily to be used as otherwise the quality of being made of *parna* wood might be extended to *Sruva*, *Sruk* etc. also * * * *". In short, *Laugākshi Bhāṣhaka* says though somewhat obscurely that the clause "he whose ladle is made of *parna* wood hears no evil sound" should not be read as it stands, but that it should be read as if certain other words which occur later on formed part and parcel of it.

You will observe that the form in which it is proposed to read the text, by applying the *Vākya* principle to it, is very different from the original text. But this variation becomes necessary in order to make the passage useful, whereas to read it as it stands would make it useless. In short, by the proposed reading the passage becomes an applicatory *Vidhi* with the proper sanction attached to it. The change is called for, to give effect to the axiom of avoiding meaninglessness to a text. Nevertheless the altered reading takes the case very far away from the principle of *Sruti* construction.

१ यथा यत्नं पर्वमथी जुहुर्भवति न स पापं श्लोकं शृणोतीत्यत्र पर्वताजुहोः समभिव्याहारादेव पर्वताया जुहुवन् । न चानर्थक्यम्, अन्यथापि जुहुः सिद्धत्वादिति वाच्यम् । जुहुश्च न तत्साध्यापूर्वत्ववशात् । तथा च वाक्यार्थः । पर्वतायाऽवतद्विधिरवतद्वारा जुहुपूर्वं भावयोदिति । एवं च पर्वताया यदि जुहुः क्रियते तदेव तत्साध्यमपूर्वं भवति नान्यथेति न व्युत्पद्यते । न पर्वताया वैयर्थ्यम् । अवतद्विधिरवतद्वारेति चावश्यं वक्तव्यम् । अन्यथा २, वादिष्वपि पर्वतापत्तेः । *Laugākshi Bhāṣhaka* p. 7.

The Vākya is removed from the principle of Sruti construction in the third degree, the Linga principle being a departure from it in the second degree.

A better illustration of the Vākya principle is afforded by the construction of the text upon which the Aruni maxim is based. In that text the words are *Arunaya pingakshai kahayanya Somam krinati*.¹ "Buy Soma by means of the red-coloured, pink-eyed and one year old."

Three adjectives are found in the above without a noun which they qualify. What is that thing which must be red-coloured, pink-eyed and one year old, with which the Soma is to be bought? It is a calf. For, in the description of the Soma Yāga where the text occurs there is the mention of a calf. Therefore, the word calf is to be put in after the adjectives to make the sentence clear. This is said to be a case of Vākya. Savara Swami and Kumarila Bhatta refer to the construction of the above text as a case of Vākya.²

From the above it is clear that, construction by Vākya includes the use of Adhyahara and of Anusanga (the supplying of ellipses in some form or other), as well as of Upakarsha and Apakarsha (transference of clauses up and down). The supplying of ellipses of connecting links of two sentences is of frequent occurrence in the process of the Vākya principle. And many of the discussions of the later writers regarding Anvaya by Adhyahara and Anusanga, fall within the

Vākya
includes
Adhyahara
Anusanga,
&c.

1 अरुण्या पिङ्गाक्षै कर्हायन्वा सोमं क्रौञ्चति । Taittiriya Samhita, (6.1, 6, 7.)

2 वाक्यम् अरुण्या क्रौञ्चति इति । Savara Bhashya, p. 310 (Jibananda's edition.)

scope of Vākya principle. In fact, practically, the questions regarding Adhyahara and Anusanga are the most important questions in relation to this principle. The great rule regarding the supplying of ellipses is, that where it is possible to supply an ellipsis by reading into the passage words that occur in the passage itself; the importation of words from outside is not proper. (See Sree Krishna's Commentary on Daya-bhaga Ch. IV. Sec. ii. para. 27.) This rule is also consistent with the Anusanga maxim which is to the effect that, 'Where there is a number of incomplete clauses followed by one which is completed by a finite verbal clause, this last should be read at the end of each of the other clauses to make them complete.'¹

Jimutavahana resorts to Adhyahara (insertion and variation of words) on more than one occasion. In his discussion regarding the well known *factum valet* controversy, he cites the following texts:

"A single parcener may not without consent of the rest, make a sale or gift of the whole immoveable estate nor of what is common to the family."²

"Separated kinsmen, as those who are unseparated are equal in respect of immoveables: for one has not power over the whole to give, mortgage or sell it."³

"Though immoveables or bipeds have been acquired

1 चरुसङ्ग न्यायः । Jaimini II. ii. 16 Adhi.

2 स्थावरस्य समस्तस्य गोत्रसाधारणस्य च ।

नैकः कुर्यात् कथं दानं परस्परमतं विना ॥ Vyasa.

3 विभक्ता अविभक्ता वा सपिण्डाः स्थावरे समाः ।

एकोद्गमोऽथः सर्वत्र दानाधमन विक्रये । Vyasa

by a man himself, no gift or sale of them unless conversing all the sons.”¹

You will see that of these three texts the last-mentioned one is defective. It only says, “no gift or sale of such and such property.” Evidently a verb should be supplied either conveying the sense of ‘must be made’ or ‘should be made.’ Jimutavahana says that the words ‘should be made’ are to be supplied.²

As a general rule, importation of words and introducing special technicalities are not countenanced by the Mimāṃsā writers.

Jaimini interprets the Vedas by his Sutras and after Jaimini Savara Swami interprets his Sutras. The rules of interpretation adopted by Jaimini in the one case, are necessarily adopted by Savara Swami in the other. So the following observation by Savara Swami with reference to the interpretation of Jaimini Sutras is very useful in showing how the Mimāṃsā writers are loath to depart from the literal principle. Savara says :—

“In the Sutras, the words are to be taken in the same sense as they are found to have in ordinary parlance. And they should not be interpreted indirectly

1 स्थावर हिपदस्तेव यद्यपि सुयमर्जितं।

असम्भूय सुतान सर्वान् न दानं न च विक्रयः ॥

2 न च स्थावरस्य समस्तस्य गोत्रसाधारणस्य च नैकः कुर्यात् क्रयं दानं परस्परमतं विना ॥ विभक्ता अविभक्ता वा सपिण्याः स्थावरं समाः । एकीकृतौ च सर्वत्र दानाद्यनविक्रये ॥ एतद्व्यासवचनद्वये न एकस्य विक्रयाद्यनधिकार इति वाच्यं यथेष्ट विनियोगार्हत्वलक्षणस्य सुत्वस्य द्रव्यान्तरावाप्तापविशेषात् व्यासवचनस्य स्वामित्वेन दुर्वृत्त पुरुषगोचरविक्रयदानादिना कुटुम्बविरोधात् अधर्माभाविता आपगत्य निषेधरूपं नतु विक्रयाद्यनिषेधार्थं । एवञ्च स्थावरं हिपदस्तेव यद्यपि सुयमर्जितं । असम्भूय सुतान सर्वान् न दानं न च विक्रयः, इत्येवमादिकं तदपेक्षमेव वर्णनीयं । तथाहि कर्तव्यवदमवश्यमत्राध्याहार्यं ।

Dayabhaga, Ch. II. paras. 29—30.

by importing words from the outside or by introducing special technicalities etc."

Kumarila Bhatta, who comments on Savara Swami puts the substance of the above as follows :

"That, in the Sutras, all the words are to be taken in their ordinary acceptance."

"That, of these words, new meanings are not to be created by unnecessarily importing words in the text."

Bhatta again says: "On account of the equal significance of the power of the sentence, as also of words and their meanings, it is only the interpretation free from the ellipses &c., that is everywhere proper." By this Bhatta means that while there is ample means of construing by Linga, ellipses &c., should not be resorted to.

Bhatta does not stop with the above observations. He goes on to say that Savara Swami in construing the Sutras in some cases, went beyond the principles stated above, and did not hesitate to change the order of the words and even to import words into the text of certain Sutras. Bhatta says that Savara Swami found it necessary to do so in order to obviate seeming inconsistencies between the Sutras and the Vedas. However, if the Swami did take such latitude, it is not absolutely against all rules of interpretation. For it is a rule of interpretation exceptional though it be, that when a text as it stands, would not be consistent with the main object and reason of the subject matter, but would rather violate such object and reason, a far-fetched and free construction is allowable. Besides, it should be remembered that the Sutras are, in many cases, mere jottings of ideas in an incomplete shape. Therefore the Swami was quite justified in taking

liberty with some of the Sūtras to make them complete and explicit.

Kumarila Bhatta gives the following instances:

"Of the remnants there should be disappearance—" here we have an instance of interpretation by supplying from without.

What Kumarila Bhatta means is this :—

In connection with the "Darsa" and "Purnamāsa" sacrifices, a question is raised as to what is to be done if the materials that are to be offered, become spoilt; and the Aphorism (VI. iv. 12) answers it by laying down the necessity of preparing fresh materials. This, with regard to the principal libations; with regard to secondary ones, the Aphorism says—*Apīva shesha-bhajam syat*,—in connection with which a doubt arises as to the nominative of the verb "syat"; and Savara Swami in his Bhashya supplies the word "disappearance" and supports this interpretation with argument. Kumarila Bhatta gives other instances, how Savara Swami supplies omissions and defects of Jaimini's Sūtras, which may be regarded as illustrations of the application of the Vākya and Linga principles in those few cases in which they were required. I quote below the translations of the verses of Kumarila Bhatta without any comments.

Illustrations
from Sloka
Vartika.

"In the Sūtra '*Vipra karshat pasoscha*,' there is a modification of the affix. In '*Loke sanniyomat*' there is intervention of a word."

"There is intervention of the Sūtra in the case of the vomiting of the Soma drunk (at the sacrifice). And in the case of the injunction referring to *animal in general*, the Sūtra itself has been changed."

"*Agnayascha svakalatwat and deyadharmavapatnam*, have been explained by a split of the sentence."

"And the following are the instances of secondary signification : (1) *Autpattikastu*¹ (2) *Gavvasya*² (3) *Ushinikkakubhah*³ meaning 'natural,' 'cattle-track', and 'Trishtup verse' respectively."

Modern
writers use
Anvaya ins-
tead of
Vakya.

The above is a little digression. Turning to the subject of the Vākya principle, you ought to know that as in the case of Linga and Prakarana, modern writers do not use the old names but others equivalent to them, that is also the case with regard to the Vākya principle. Modern writers generally use the word Anvaya instead of Vākya. In Anvaya (syntactical connection) small particles are of a great value. For instance, the particle *cha* which means and denotes that the words connected by it have to be taken as connected incidentally or collectively or severally or in a cumulative sense.

The discussion on the simultaneous heirship of the son and the unmarried daughter in the property of their mother, turns on the meaning of the particle *cha* in the texts bearing on the subject. (Vide. Tarkalankara's commentary on Dayabhaga IV. ii. 1-7).

4. THE PRINCIPLE OF PRAKARANA.

Prakarana
principle.

The word Prakarana has various allied meanings. When an author in writing on a subject divides it into parts or first divides it into some general topics and then subdivides the topics into subordinate parts, and thus carries on the process of division until short

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1. Aph. I. i. 5.
 2. Aph. VIII. i. 18.
 3. Aph. V. iii. 6.

sections or paragraphs are arrived at, such sections and paragraphs are called *Prakarana*s. But with reference to the subject of law—the Divine law as indicated in the Vedas, Jaimini uses the word *Prakarana* as signifying the details of a transaction enjoined or subordinate rules concerned with the carrying out of the details. He defines the word in this sense in Sutra II, Ch. III, Bk. III. where he says :

“(Where the principal *Vidhi* is) disjoint, the purpose of the details (*itikartavyata*) is settled from the *Prakarana*.” This leads to the principle of interpretation by *Prakarana*, which Laugakshi Bhashkara defines as “*Ubhayakanksha*” (interdependence).¹ He explains *Prakarana* as follows :

“An example is afforded by the following passage connected with the *prayajas*, ‘he is to offer the *samidh*.’ As in this passage no special fruit (of the offering) is mentioned, the sense merely being ‘he is to realize by means of offering the *samidh*,’ there arises the question ‘what (is he to realize)?’ originating in the want of something to which the offering of the *samidh* might contribute. And again after the passage about the *Darsapaurnamasa* sacrifice has given rise to the idea ‘he is to realize paradise by means of the *Darsapaurnamasa*’ there arises the question ‘how is he to realize paradise?’ originating in the want of something which may contribute towards bringing about the desired result. And thus by mutual interdependence the subsi-

Laugakshi
Bhashkara's
explanation
of *Praka-*
rana with
illustrations.

1 असंयुक्तं प्रकरणादितिकर्तव्यतायित्वात् । Jaimini III. iii. II.

2 उभयाकाङ्क्षा प्रकरणम् । Laugakshi Bhashkara.

diary relation in which the *prayajna* stand to the Darsapaurnamasas is established.”

You will see from the above example that the text ‘he is to offer the *samidh*’ is an incomplete proposition. It does not show in what connection the offering is to be made or for what purpose. Then, again, you find the proposition elsewhere stated that one is to realize paradise by means of the Darsapaurnamasas. This proposition also is incomplete inasmuch as it does not show what offerings are to be made in performing the Darsapaurnamasas. It simply declares the purpose and object of performing the Darsapaurnamasas. It however forms an essential part of the Vedic Vidhis and cannot be left incomplete.

By literal construction of the two passages nothing is gained. In fact, the meaning of either passage not being complete, the principle of literal construction as embodied in the Sruti principle cannot apply. Then, again, the principle of construction by the suggestive power of words and sentences (*Linga*) is also of no avail in this case. For the first passage *Samidha yajeta* has in it no suggestive power to suggest any thing specific to develop the sense of the other passage ‘*Swargakama Darsapaurnamasabhyam yajeta*’ and vice versa. The *Vakya* principle is also not applicable to the case. For there cannot be any grammatical connection between passages which are not close to each other. Thus

१ यथा प्रयाजादिषु समिधा यजतीत्यादौ वाक्ये फलविशेषस्याभिर्देभ्यः साम-
दानेन भावयेदिति बोधानन्तरं किमिति उपकार्याकाङ्क्षा। दर्शपूर्णमास-
वाक्येऽपि दर्शपूर्णमासाभ्यां सुगं भावयेदिति बोधानन्तरं कथमित्युपकारकाङ्क्षा
इत्थं बोधयाकाङ्क्षया प्रयाजादीनां दर्शपूर्णमासाङ्गत्वम्। Laugakshi Bhash-
kara, p. 8.

you are driven to a new principle of construction. This principle really is the principle of interpreting by the logic of the subject. It is based on the latent relation of ideas which, looking to the nature of the subject, must have been present to the mind of the author, if I may be permitted to use the expression, with reference to a work of which there is no human author. It is clear that this principle of construction is removed from the literal principle further than either of the preceding two *viz.*, *Linga* and *Vakya*.

I think you will better understand the nature of the principle by taking a case such as might arise in our legal practice. Suppose the Penal Code provided that a man who commits theft should be punished with one year's imprisonment. And also suppose that there was no provision in it as to the nature of the imprisonment to be awarded in case of theft. Under such circumstances suppose we find in another part of the Code a passage to the effect that a man who commits theft is to be punished with rigorous imprisonment. Now how does the matter stand? In the first passage the nature of imprisonment is not stated but the period is stated. In the second the nature of imprisonment is stated but not the period. Would it not be proper to construe the two passages together and to conclude that the Legislature meant to inflict a punishment of rigorous imprisonment for one year in all cases of theft? But such a principle of interpretation could hardly be called an interpretation by context (*Linga*) or interpretation by grammatical adjustment (*Vakya*). The *Prakarana* principle of old Sanskrit works covers it.

According to the *Mimansakas* where it is possible

to regard a clause as Prakarana, it should not be placed higher, so as to make it a Vidhi, specially where such a Vidhi would be useless. This is laid down in Sutra 24, chap. II, Bk. I :—

“Where Prakarana is possible, something higher must not be supposed when it would bring into existence an useless Vidhi.”¹

This Sutra has been made to bear on a text of Taittiriya Samhita which is to the following effect :

“ If you leave such and such act unperformed, you will please the lowest spirits ; if you half perform it, you will please the middle spirits ; if you fully perform it, you will please the gods ; the sacrificer who has left the work half done should do it thoroughly to please the gods.”²

The question raised is this. The last clause which is the operative clause speaks of doing the thing thoroughly so as to please the gods. But there is no operative clause of doing it by half so as to please the middle spirits, who like the doing of it by half. Should not such an operative clause be presumed? The author says no, because the clause of doing the thing by half to please the middle spirits is capable of being read as a Prakarana to the last clause. Its meaning would be quite satisfied by taking it as merely an introductory clause. So a Vidhi should not be presumed for performing a similar act by half,

1 प्रकरणे सम्भवन् अपकर्षो न कस्येति, विश्वानर्थक्यं हि तं प्रति ॥

Jaimini I. ii. 24.

2 यो विदग्धः, स नै कृतः । यीऽशृतः, स रौद्रः । यः शृतः, सः स देव-
लगादविदग्धता शृत इत्यः स देवस्त्राय ॥ Taittiriya Samhitā
(1.6 3.4).

specially as the whole passage bears on the Purnamasi Yaga, which has no Vidhi for any offering to the middle spirits.

In order to refer a passage which states a matter of detail or an incidental matter to some principal matter with which it may be connected, the interpreter must ascertain what the principal matter is. This he must do by a general study of the subject. Jaimini lays down in Sutra 1, Ch. I, Bk. VII.

“That according to Sruti, among sacrifices that which is the principal, has an appropriate governing influence.”

This principal sacrifice is Darsapurnamasi and it is called the Prakriti. Subordinate sacrificial acts without any express purpose, must be taken to be part of this principal sacrifice. The Darsapurnamasi has no provisions as regards details in its own place. So a want is created for the subordinate sacrificial acts which are stated elsewhere.

In fact, the principle of Prakarana is a principle of Upalakshana (incidental indication). It has already been shown that the Linga principle of the Mimāṃsakas corresponds to what is called Lakshana Artha (sense by indication) by later writers such as Jimutavahana and others. What is called Upalakshana by these writers corresponds to Prakarana. No doubt this latter term is usually used to indicate a case where a particular instance is taken to represent a general rule. For instance Jimutavahana, with reference to what is stated regarding the succession of a son to his father, says that this

Upalakshana is another name for Prakarana

॥ यत्प्रतिभाष्यते तच्छेषां मुख्यभेदे यथाधिकारं भावः स्यात् ॥

Jaimini VII. i. 1.

is a case of Upalakshana only, meant to represent the general principle. If the general principle had been stated elsewhere the particular instances would have been only an illustration of it, the fit place of which would have been where the general principle was formulated. Thus Upalakshana though it is not exactly a Prakarana resembles it.

Regarding the question of the succession of persons related as one's paternal uncle's son, Justice Mitter in the Full Bench case of *Gurugobinda Shaha vs. Anand Lal Ghosh*,¹ points out that the *Dayabhaga* abounds with passages in which a particular instance is put down to represent a general principle. A particular instance is in a manner a part of a general principle, just as an isolated act of sacrifice is taken to be a part of the standard sacrifice.

Raghu Nandana in his *Smrititattva* in discussing the following text of Manu practically illustrates the difference between a Vakya and a Prakarana, "One who assaults a Brahmana must perform the Krichhra penance." With regard to this the objection raised is that the passage occurs in connection with the *Darsapaurnamasi Yaga* and that therefore it should be read as a Prakarana of that Yaga, and it is applicable only to one who is engaged in performing it and is not a general rule of conduct applicable to all cases generally. But Raghu Nandana shows that if the passage be read, as it should be, with what follows it, then it becomes an independent Vakya (proposition) by itself. This being so, by Jaimini's principle that Vakya prevail over Prakarana, the passage must be read as a general Vidhi.

¹ 13 Weekly Reporter, p. .

In connection with Prakarana, I should explain to you how the Mimansa writers distinguish a Prakarana from a Guna Sruti (general clause). A Prakarana forms a part and parcel of some one principal Vidhi or principal transaction. But a Guna Sruti is a general enunciation of some proposition, which is applicable to any Vidhi or transaction, according to its requirements. In fact, it describes what are the characteristic features of a thing, without reference to any particular case.¹ In this connection see also Mitha Asambandha Nyaya (the principle of non-mutual connection) which is stated as follows :

Distinction
between
Prakarana
and Guna
Sruti.

"Descriptive clauses being directed to the main purpose are all co-ordinate and have therefore no connection with each other."²

Mimānsakas mention two other principles of construction along with the four mentioned above. These are called Sthāna (position) and Samākhyā (name). They are, in fact, particular cases of Prakarana and perhaps of Linga also of a limited character.

The Sthana principle.

Sthāna (position) means commonness of place.³ This definition is somewhat vague, but its meaning is made explicit by the treatment of it. It means the relative position of one text with reference to another or the relative position of one enjoined act with reference to another. Such relative position indicates, in effect,

Sthana principle defined and explained. Its identity with Krama.

1 सर्वेषां वा लक्षणादविशिष्टं हि लक्षणम् । Jaimini III. i. 14.

2 वृथानां च परार्थत्वादसम्बन्धः समत्वात् स्यात् । Jaimini III. ii. 22.

3 देशसामान्यं स्थानं । Laugakshi Bhashkara.

The importance of Krama in Vedic ceremonies and in certain cases of succession of heirs.

the order of sequence in which the texts must be taken to stand with reference to each other or in which the acts must follow each other. Thus virtually Sthāna becomes identical with Krama (the order of succession). Accordingly it is said that Sthāna has the same meaning as Krama.¹ In fact that which gives an importance to the relative position (Sthāna) in matters of construction is that there is a sort of interdependence between clauses and things which are bound to transpire in a certain order of sequence. Accordingly the relation arising from position is often useful in settling the meaning and effect of texts which are thus related by position. Hence the value of Sthāna, though it is not very great in matters of construction. The question of Krama (order) is of grave importance as regards the Vedic ceremonies. The rules of Krama may also be turned to account in settling the relative position in some cases of heirs, whose position is not determined by express texts. As for instance, in the case of the succession of the sons of daughters of agnate relations. When such an heir presents two oblations only to one of the ancestors a difficulty has been felt whether he is to be placed after or before an agnate relation who offers only one oblation to such ancestor. In the case of such a question the considerations which Jaimini introduces in the rules of Krama laid down in Book V. of his work, may be of considerable help. But a resort to these rules has never been tried in such a case.

१ आन'क्रमच'वर्णनम् । Laugakshi Bhashkara.

The Samākhyâ principle.

Then as regards Samākhyâ (name). This is another case of an inferior kind of Prakarana as already observed. Samākhyâ means a connection established between different passages by the indication afforded by a derivative word or a compound name. For instance, where in an isolated passage the word *Phala Chamasa* occurs, that word suggests a connection of the passage with the Soma Yāga in which the word *Chamasa* occurs as meaning a drinking cup. Similarly the word *Dāyada* (person on whom heritage devolves) occurring in a text would connect that text with the subject of *Dāya* (partition). These two topics (Krama and Samākhyâ) are not of much importance so I need not enlarge upon them.

Samakhya is another case of Prakarana.

Section IV. The relative force of Sruti, Linga, Vakya &c.

The relative force of the several principles has been to some extent indicated before. But the Mimāṃsakas attach so great an importance to this question that Jaimini has made a separate Adhikarana (topic) of it. I should therefore explain to you this question separately in detail.

The relative force of the several principles.

By a general comparison of Linga, Vakya and Prakarana &c. with the observations of Maxwell which I have quoted before, you must have seen that all these Mimāṃsā principles of construction fall under the head of construction by context, as that expression is used in English books. The English writers make no sub-classification of the rules of construction by context such as the Mimāṃsā writers try to do. Maxwell says:

The Mimāṃsā principles of construction are, according to English writers construction by context.

"The literal construction then, has, in general, but *prima facie* preference. To arrive at the real meaning, it is always necessary to get an exact conception of the aim, scope, and object of the whole Act ; to consider, according to Lord Coke, 1. What was the law before the Act was passed ; 2. What was the mischief or defect for which the law had not provided ; 3. What remedy Parliament has appointed ; and 4. The reason of the remedy. According to another authority, the true meaning is to be found, not merely from the words of the Act, but from the cause and necessity of its being made, which are to be ascertained not only from a comparison of its several parts, but also from extraneous circumstances. The true meaning of any passage, it is said, is to be found not merely in the words of that passage, but in comparing it with every other part of the law, ascertaining also what were the circumstances with reference to which the words were used, and the object appearing from those circumstances, which the Legislature had in view."

You see that in the above observation there is a suggestion of a variety of rules and principles covered by the general expression 'construction by context.' But there is no attempt to make any distinct and clear classification of these rules and principles. In fact, there is no attempt even to mark off the province of literal construction from that of contextual construction. The *Mimāṃsā* writers, however, have made such an attempt. And I think you will be satisfied that the

1 Maxwell, 3rd edition, pp. 30—31.

attempt cannot be said to be unsuccessful. A proper classification makes science. And I venture to say that it is the Mimāṃsā writers, and only they, who may be credited with having reduced the rules of interpretation to a scientific shape.

The distinction between Sruti on the one hand and Linga, Vākya &c. on the other is obvious. Prakaraṇa is also obviously distinguishable from the rest. As regards Linga and Vākya, the difference between them is not so clear and patent. But the Mimāṃsakas establish a real distinction between them. Both these principles are principles of interpretation by context. But, according to the Mimāṃsakas the term Linga is applicable only to cases in which the context clears up the obscurity and vagueness of the meanings of words and of clauses. And the term Vākya is applied where the context removes the obscurity and vagueness of the connection between one word and another, or between one clause and another. In Linga the limbs of a proposition are illustrated or illumined by extrinsic light; in Vākya the limbs are enlarged or contracted by additions or subtractions. Thus, although both Linga and Vākya are cases of interpretation by context, they are distinguishable from each other. Linga is said to be the suggestive power of words and clauses. It may be said that Vākya also in one sense involves the suggestive power of words and clauses. But there is this difference between the two, according to the Mimāṃsakas. They take care to point out that the Linga is the suggestive power of words and clauses to show the meaning and intention of any particular word or clause. Kumārila Bhaṭṭa elaborately explains

The distinction between Linga and Vākya.

this. In the case of Vākya, no doubt the suggestive power of words and clauses comes into play, but it is not to show the meaning of any particular word or clause, but to indicate how one word or one clause is to be read with another word or another clause.

The above distinction is not fanciful, nor useless. For there are cases in which it is only necessary to consider the meaning and intention of any particular word or clause. And there are others in which there is no necessity to consider the question of the meaning of any word or clause, but in which the only necessity is to consider how a particular word or a particular clause should be read with some other clause as a matter of syntax. So it is proper that the interpreter should not make confusion between the two cases.

The Mimāṃsā writers do not lose sight of the fact that practically both the Linga and Vākya principles, and for the matter of that also the Prakaraṇa principle, are often applied together as supplementary to each other in interpreting one and the same passage. In such a case the different principles co-operate towards the same end, and there is no conflict between them. Consequently in such a case the question of their relative force or relative value does not arise. When, however, there is a combination of the operation of two or more principles, as stated above, the Mimāṃsā writers designate the case as belonging to that principle of construction which has the predominating part, ignoring those that play a subordinate part.¹ You ought to know this as otherwise it would be diffi-

1 विध्युक्तिविधिविधौ न हि न विना शब्दशक्तिभिः ।

न चेन्द्रशब्दसामर्थ्यमभिप्रायतिवर्जितम् ।

cult for you to follow the discussions of Savara Swami or of Kumarila Bhatta on the subject.

The Sruti is distinguished from the Linga and a Vākya, in as much as in a Sruti there is no ambiguity of meaning nor any vagueness of connection raising doubts as to which word should be read with which word. It is distinguished from Prakarana, because a Sruti is independent while a Prakarana is dependent. A Vākya differs from a Prakarana because in a Vākya words or phrases are to be read together as a matter of syntax ; while in a Prakarana propositions are to be read together as a matter of the logic of the subject. But in the case of all when they are harmoniously combined in operation, the case goes by the name of that principle which plays the chief part.

Sruti distinguished from Linga, Vākya and Prakarana.

In the Gārhapatya maxim¹ the leading part of the sentence (Gārhapatyam Upatishthate)² being Sruti i. e. being unambiguous the whole sentence is taken as a Sruti, because by virtue of the leading words the whole sentence becomes clear in meaning. Here the Vākya principle comes in as a subordinate matter.³

सर्वसुभयव्रीभयमपाति ।

किं त्वेन्द्रागार्हपत्यस्य नीतिश्रुत्यावगम्यते ।

इन्द्रागार्हपत्यस्यापि नात्र श्रुतिः कारिता ॥

Tantravartika, p. 839. Benares edition.

वाक्यं चेत् एन्द्रागार्हपत्यमुपतिष्ठते इति ।

नैतदेवम्, यदपीतत् वाक्यं श्रुतिरप्यत्रास्ति, वा तत्र श्रुतिः साक्षिणेन विरुध्यते, न यत् वाक्यम् । Savara Bhashya p. 314. Jibanda's edition.

1 गार्हपत्यव्यायः Jaimini III. ii. 2 Adhi.

2 गार्हपत्यम् उपतिष्ठते ।

3 यदपीतत् वाक्यं श्रुतिरप्यत्रास्ति, वा तत्र श्रुतिः, सा साक्षिणेन विरुध्यते ।

In the Barhi maxim¹ the meaning of the leading words Dâmi and Barhi² of the sentence being settled by Linga, the whole sentence is regarded as a case of Linga, although the Vākya principle has a subordinate part in it. In the Parnawood maxim the leading idea is not expressly mentioned but it is implied by reading one clause with another by the principle of Vākya. But tacitly the principle of Prakarana joins in making the implication.

In all these cases, the principle that has a leading part gives the name to the case, and the principles that act a subordinate part are ignored. All these, however, are cases in which there is no conflict between one principle and another. There are, however, cases in which different principles are applicable, tending to opposite results. When this is so, one principle should override another.³ But in the absence of any rule on the subject, the interpreter would not be in a position to determine which of the opposing principles should be taken to override the others. To meet this difficulty Jaimini lays down the 7th Adhikarana⁴ of third chapter of the third book. The Adhikarana is called "Srutyâdinâm purva purva Valiyattwâdhikarana" (the topic of the superior force of Sruti, Linga &c. in the ascending scale). This Adhi-

Savara Bhashya, III, iii. 14, p. 314. Jibananda's edition.

1 बहिःशाय । Jaimini III. ii. Adhi 1.

2 बहिः । दामि ।

3 बलीयानपि हे तु विरुध्यमानम् अवलीयांसं वाचितुमर्हति नाविरुद्धम् ।
Savara Bhashya, III. iii. 14.

4 श्रुत्यादीनां पूर्वपूर्वबलीयसु अधिकारम् । Jaimini III. iii. Adhi 7.

karana appears in Sutra 14 of the said chapter of the said Book.¹ It forms the distinctive feature of the Mimāṃsā system of interpretation. No other Adhikarana is so important as this, and it is to clear the ground for understanding this Adhikarana that I have minutely discussed the characteristics of the several principles concerned, and of the ways in which they may be combined. The Sutra runs thus :

“Where Sruti, Linga, Vākya &c. are applicable (but tending to different results), one is superior to the other in the order of the above enumeration, because the significance of each that follows is remoter and more far-fetched.”¹

Accordingly we have it from the Gārhapatya maxim that, where the Sruti and the Linga principles are both applicable but with divergent tendencies, the Sruti prevails. In the next place, the case of divergence between the Linga and the Vākya is illustrated by the discussion on the following text :

Superiority
of Sruti over
Linga and
Vākya, and
of Linga
over Vākya.

“I make a pleasant seat for thee, I make it very lovely with a stream of Ghee ; on this, the immortal one sit down, repose on it, propitiously-minded, O marrow of the rice-grains.”

Now this passage is not a combination of two co-ordinate Vākyas, the one containing the idea of making a seat, and the other the idea of an invitation to the rice-deity to sit on it. But it is one Vākya in which, of the two ideas, one must be the principal and the other ancillary. The question is which of the two ideas is the principal, the

1 नृतिनिष्ठ वाक्य प्रकारस्य ज्ञान समाख्यानां समवाये पारदौर्बल्यमर्थ विप्र-
कषात् । Jaimini III. iii. 14.

making of the seat or the request to the rice-deity to sit on it. If you read it simply as a Vakya, then the leading idea would seem to be asking the divinity (the marrow of the rice-grains) to sit down on the pleasant seat, which the devotee is preparing and making lovely for him. To give effect to this idea, the second clause should be placed first, as it contains the leading idea, thus giving the first a subordinate position, which according to the grammatical connection apparently it deserves. This is the effect of construing the passage by the Vākya principle. Now apply the Linga principle to it. When the Rishi says, 'I make a pleasant seat for thee, O divinity in the marrow of the rice-grains,' it implies by the suggestive force of the words that such a pleasant seat should be made. In other words, it implies a Vidhi for making such a pleasant seat. This suggestive power of the words is strengthened by parallel cases such as, "Barhi Devasadanam Dami."¹ Thus by applying the Linga principle, the first half of the sentence becomes the leading element of the sentence and becomes an applicatory Vidhi, subsidiary to the Darsa-paurṇamāsi Yāga. The two results being different, which is to prevail? The answer is Linga. "For, if you accept the Vākya principle, you must also apply the Linga principle to make an applicatory Vidhi out of the passage, so as to convert the second clause to an applicatory Vidhi to the effect that the rice-deity must be asked to sit down. But by the direct application of the Linga principle we have an applicatory Vidhi without transposing the parts. Therefore we should not resort to the Vākya principle in this case."

१ बर्हिदेवसदनं दामि ॥

Next as regards the divergent effect of Vākya and Prakarana in a case where they both apply. In such a case the Vākya is to prevail and that for the same sort of reasons. This is illustrated by a text somewhat perplexing. It is as follows :

Superiority
of Vākya
over Praka-
rana.

“O Indrâgni !¹ you accept this offering etc.”

This text is collateral to the text relating to the Darsa sacrifice and should be read together as forming one Vākya. But it forms a Suktavâka, and, as such, can be connected by Prakarana with the Darsapaurṇamâsi sacrifice. In other words, by Prakarana, this Suktavâka is to be used both at the Darsa sacrifice as well as at the Paurṇamâsi sacrifice. But reading the Suktavâka as a text collateral to the mantra and addressed to Indrâgni, who is only invoked at the Darsa sacrifice, the Suktavâka should be used only at the Darsa sacrifice. In other words, by the Vākya principle the Suktavâka would relate only to the Darsa sacrifice, the divinity Indrâgni not being found in the Vidhis regarding the Paurṇamâsi sacrifice. Thus the two principles would tend to different results. According to the Adhikarana, the Vākya principle should prevail and the Suktavâka should be only used at the Darsa sacrifice and should not be taken as a Prakarana to the Darsapaurṇamâsi sacrifice. The reason assigned by the Mimāṃsakas with reference to this case is rather technical. But to common sense, the reason is simple. The construction by Vākya is comparatively nearer to the literal construction than construction with reference to presumptions made on the basis of logical considerations. I need not enter into similar discussions with

¹ इन्द्राग्नि इदं अक्षिरित्यादि । Langākshi Bhash'ara.

regard to the other two unimportant principles *viz.*, Sthana and Samakhya.

The effect of the Adhikarana as regards Sruti, Linga, Vākya and Prakarana may be put in a nut-shell thus :—

When both the substance and form of an expression is clear (Sruti-like), it requires no construction. Failing that, the construction should be rather with reference to the substance (Linga) of the expression than its form (Vākya). And as a Vākya represents an integral idea, an expression should be presumed rather to be a Vākya than a Prakarana, which means a fragmentary idea.

Illustration
from
Jimutava-
hana show-
ing the
superiority
of the Sruti.

The subject of the Adhikarana regarding the superiority of one principle of construction over another will, I believe, be more clear to you by referring to instances in Jimutavahana's work. As an instance of the Sruti principle over-riding the Linga, I would explain to you Jimutavâhana's discussion on the interpretation of the text of Manu :

“After the [death of the] father and the mother, the brethren being assembled, must divide equally the paternal estate ; for they have not power over it, while their parents live.”¹

Jimutavâhana interprets this text much on the same lines on which Jaimini interprets the text, “Aindrâ Gârhapatyam Upatishthate,”² which is the text of the Sruti principle. In this latter text the words ‘Gârhapatyam Upatishthate’ being the

1 ऊद्धृ० पितुश्च मातुश्च समेत्य धातवः समं ।

भर्तृणां पैत्र्यं रिक्तमनौजास्तै हि जीवतीः ॥ Manu IX, 104.

2 ऐन्द्रा गार्हपत्यम् उपतिष्ठते ।

essence of the whole text and being clear in meaning, the expression 'Aindra' with its suggestive power (Linga) is not allowed to interfere with the clear meaning of the word Gârhapatya. So in the above-mentioned text of Manu, Jimutavâhana takes the words 'Anishâste hi jibatoh' to form the essence of the text, and he says that when the meaning of these words is clear showing that the sons have no right during the life-time of their parents, the first part of the sentence, which might suggest the idea of laying down a rule as regards the time of partitioning property, which had vested in the son before the death of the father, cannot be taken in this sense so as to over-ride the clear meaning of the essential words 'Anishaste &c.' Colebrooke translates Jimutavahana's statement on this point in para. 29, Ch. I, as follows :

"Therefore the text of Manu must be argued [by you] to intend the prohibiting of partition, although the son's right subsists during the life of the father. But that is not maintainable. For it would thus bear an import not its own."² In fact, the first clause, at best, can only suggest that the right vested before the death of the father by way of Linga. But as the concluding portion clearly shows that the right had not so vested, it should prevail in the way of Sruti.

Then as regards the superiority of Linga to Vākya, the Mimânsâ illustration may not appear to be so clear as it deals with unfamiliar matters. An instance from

1 अनीशास्ते हि जीवतोः ।

2 अतो जीवति पितरि सत्यपि पुत्रानां स्वाध्वे निषेधाच्च' समुच्चयनं
स्वाध्वं तदाद्याय' अस्त्राद्यपरत्वात्पतेः । Jimutavahana.

Illustration
from Jimuta-
vâhana
showing the
superiority
of Linga to
Vakya.

Jimutavâhana to which allusion has already been made, will make the matter clear. Take Jimutavâhana's discussion on the following text of Yâjñavalkya :

"The separate property of a childless woman married in the form denominated Brâhma or in any of the four [unblamed forms of marriage] goes to her husband." ¹

This text is not an explicit one. But if you avail of the suggestive power of a corresponding text of Manu, the meaning of it is pretty clearly shown to be that, property which has been received by a woman, at the time of her marriage in any of those forms, devolves on her husband, if she die without issue. The text of Manu runs as follows :

"It is admitted, that the property of a woman married by the ceremonies called Brahma, Daiva, Arsha Gandharba and Prajapatya, shall go to her husband, if she die without issue. But her wealth, given to her on her marriage in the form called Asura or either of the other two (Rakshasa and Paisacha) is ordained, on her death without issue, to become the property of her mother and of her father."² In this passage the words 'But her wealth given to her on her marriage etc..' as Jimutavâhana points out, show that the meaning of the first part of Manu's text as well as Yâjñavalkya's text is, that property given to her at the Brâhma and the other

1 अपजास्त्रीधनं भर्तुर्ब्राह्मादिषु चतुर्विधं ।

2 ब्राह्मदैवार्थं मातृव्यं प्राजापत्येषु यद्वनं ।

अपजायामतीतायां भर्तुरेव तदिष्यते ॥

यत्तस्याः स्वाङ्गं दत्तं विवाहेऽसुरादिषु ।

अतीतायामपजायां मातापित्रोस्तदिष्यते ॥

Manu IX, 196 and 197.

allied forms of marriage is the subject of the rule enunciated. On the other hand, if you look merely to the syntactical arrangement of Yâjnavalkya's text, the meaning would be that any property belonging to a woman married in the above forms would go to her husband. Thus there would be a conflict of Linga and Vâkya in this case. Jimutavahana settles that the Linga should prevail, though he does not say this in so many words, but states some special reasons for his conclusions.

As regards the relative force between Vâkya and Prakarana, an instance of it has been given by Raghunandana. This instance referring to the text of Manu as to assaulting a Brahman has been referred to elsewhere and need not be repeated.

To complete this topic, I should tell you a few words regarding the Pramânas (means of proof). The principles of construction stated above are called by Laugâkshi Bhâshkara Viniyoga Pramanas; the word Pramana meaning principles of construction. But the Mimânsâ philosophy like every other system of Hindu philosophy enumerate a number of Pramânas (means of proof) in a general way.

These are :—

- (1) Pratyaksha¹ (Direct perception).
- (2) Anumāna² (Inference).
- (3) Upamāna³ (Analogy).
- (4) Arthapatti⁴ (Concomitancy of sense).

1 प्रत्यक्ष ।

2 अनुमान ।

3 उपमान ।

4 अर्थापत्ति ।

- (5) Shabda¹ (Communication).
- (6) Shishtachâra² (Approved usage).
- (7) Abhâba³ (something like reductio ad absurdum method).

These means of proof have but little connection with the subject of interpretation, except that Shâbda Pramâna is the basis of the Sruti principle, and that Anumâna, Upamâna and Arthâpatti together are the basis of Linga, Vâkya and Prakarana principles, while the Shishtâchâra is the foundation of those principles of construction, which have reference to usage, and which are discussed by Jaimini in his chapter on the Smritis.

In the next lecture I shall lead you through some of the principles of application of texts as distinguished from interpretation of texts.

1 शब्द ।

2 शिष्टाचार ।

3 अभाब ।

LECTURE III.

General Mimansa principles regarding the application of texts.

Interpretation of texts is not quite the same as the application of texts, though they are sometimes not separable. It is, however, easy to understand the difference between them : as for instance, minority is defined in the Hindu Law. It is one question to understand the definition, but it is quite different one to fix the circumstances of the cases to which that definition is to apply. Likewise it is one thing to interpret the phrase 'Dvayoh Pranayanti,' and it is quite another thing to know whether it is to apply to the Saumika Yajna or to the Darshapaurnamâshi Yajna. Similarly, as regards texts which describe the doing of certain things, it is one thing to understand the act described, and another thing to know whether it is enjoined as obligatory or otherwise. In this last case, the distinction between interpretation and application is not sharp, but it exists. I now proceed to explain to you the general principles of *application*, including in this topic questions as to whether a text is obligatory or not, or whether it is only partially obligatory. I would divide this lecture into two parts :

Distinction
between
interpretation
and applica-
tion of texts.

I. Rules to determine where a text is to be applied as obligatory, where it is to be taken as quasi-obligatory, and where altogether as non-obligatory.

II. Rules to determine the persons to whom particular texts apply, the order in which texts apply, the order in which texts mentioned in one connection are to be applied to other cases, and the necessary variations and omissions in making such application.

Section 1. Which texts are obligatory and which

are not obligatory as also which are only partially obligatory ?

The three kinds of texts defined, discussed and illustrated.

An obligatory text is one that imposes an obligation, either in the shape of a principal Vidhi, or of an applicatory Vidhi, or as a necessary condition to the doing of a thing enjoined by a Vidhi. A non-obligatory text, on the other hand, is one which neither imposes an independent obligation nor adds to an obligation already imposed. A text of partial or quasi-obligation is one which creates only an imperfect obligation. These may be roughly taken to correspond to those rules of our modern law, the breach of which is regarded as mere irregularity as contradistinguished from illegality.

The five classes of texts which exhaust the Vedas *viz.*, Vidhi (injunction), Nishedha (prohibition) Arthavâda (explanatory statement), Namadheya (nomenclature) and Mantra (sacrificial formulae), contain two classes which are obligatory *viz.*, Vidhi and Nishedha ; and two classes *viz.*, Arthavâda and Nâmadheya, which are not obligatory ; and a fifth *viz.*, Mantra, which is between the two and is sometimes invested with the character of a Vidhi and sometimes not.

There are texts which clearly bear the mark of one or other of these classes, so as not to be mistaken for any other class. But there is a large number of texts which on the face of them, are of a dubious character ; or which apparently belong to one class, but which, in reality, should belong to another. It is necessary for the interpreter to settle the true application of such texts. This branch of the subject relates, in fact, to the determination of the character of a text, the intention of which is not clearly expressed. This task is required not only for interpreting the Vedas, it is equally necessary for interpreting the Smritis, and our modern legislative enactments.

Says Maxwell :—

“ Passing from the interpretation of the language of statutes, it remains to consider what intentions are to be attributed to the Legislature, where it has expressed none, on questions necessarily arising out of its enactments. The importance of object and reason—
Pradhana Chodana.

“ Although, as already stated, the Legislature is presumed to intend no alteration in the law beyond the immediate and specific purposes of the Act, these are considered as including all the incidents or consequences strictly resulting from the enactment.”¹

As regards the Vedic law, there is one wide statement in the shape of a general injunction which expresses the whole of its object and purpose. This is called the Pradhana Chodana (the primary command) viz., *Swarga kamo yajeta*². Regard being had to this main purpose and object of the Vedas, the application and the true character of all imperfect and obscure texts are settled. A similar process with reference to object and reason is resorted to, in the case of our modern enactments; and should be resorted to, in applying the Smriti texts and the texts of digest writers, who are practically the latest Legislators of the Hindu nation.

In the Vedic law, what is an Arthavada as distinguished from a Vidhi is fully explained by Jaimini and his followers. It is a text which imposes no additional obligation to that of a Vidhi text as already explained before. It is something in the nature of a parenthetical explanatory clause either containing a praise of the Vidhi, or

¹ Maxwell, 3rd edition, p. 493.

² स्वर्गकामो यजेत ।

Non-obliga-
tory text—
Arthavâda

giving a popular illustration of it, or showing some popular reason for it. In the Vedic literature it is often in the shape of an allegory, parable or a fable. Of course in the Smṛiti literature or in the digest literature we have no Arthavâda in the shape of an allegory, parable or a fable. So we may leave out all discussions regarding the Vedic Arthavâdas of this nature. But Arthavâdas which deal with popular reasons and popular illustrations are alike applicable to the Vedas as to the Smṛiti literature. These are apt to be confounded with obligatory texts. The Mīmāṃsā rules which prevent such confusion are of the greatest importance. Take, for instance, the rule of the Vidhibannigadādhikarana¹ (the topic of Arthavâdas looking like Vidhis) to which I have already alluded for an incidental purpose. This topic or maxim consists of the following sūtras:—

Vidhibad-
niḡadadhi-
karana

The objector : “(A descriptive clause) having an effective sanction, why not take as a Vidhi ; to take it as a mere description is to make it useless.”²

The objector continuing, “would you say (its apparent operative character) is like the light talk of common people.”³

The objector himself answering :

“It cannot be so, for in the latter case there is some antecedent cause.”⁴

Jaimini says,

1 अथ विधिवन्निगदाधिकरणम् Jaimini I. ii. Adhi. 2.

2 विधिर्वा स्यादपूर्वलात् वादमात्रं अनर्थकम् ॥ Jaimini I. ii. 19.

3 लोकावदिति चेत् ॥ Jaimini I. ii. 20.

न पूर्वलात् ॥ Jaimini I. ii. 21.

“ The whole thing has been explained, is it a case of an explanatory clause forming part of a Vidhi.”¹

Then Jaimini goes on to say,

“ In some cases to treat a text as a Vidhi is to make it useless. Therefore it is properly taken as a gloss. In all like cases it is to be so taken.”²

In what cases to treat a text as a Vidhi is to make it useless? These are cases like that given in the illustrative text, *viz.*,

“ The Indian fig tree is the tree wherewith the sacrificial post is to be made.

“ The fig tree is strong and the sacrificial animal (to be tied to it) is strong; so strong animals are (safely) tied to it.”³

In this text the first clause is a Vidhi, *viz.*, that the Yupa (post) is to be made with the *oudumvari* wood (fig wood). This fully gives all that is required in the shape of a Vidhi in this connection.

The following clauses *viz.*, ‘the fig tree is strong,’ ‘the animal is strong’ are merely descriptive. To treat them as Vidhis, in other words, to take them as laying down the obligation, that in making the Yupa you must get a strong fig tree and also a strong animal &c., will have the effect of stultifying the Vidhi by which the Yupa is to be simply made of the fig wood without any condition. Therefore, says Jaimini, in such cases,

1 उक्तं तु वाक्यशेषत्वम् ॥ Jaimini I. ii. 22.

2 विधिघानर्थकः कश्चित् । तस्मात् स्तुतिः प्रतीयेत ।

तस्मान्मात्रादितरेषु तथालम् ॥ Jaimini I. ii. 23.

3 उदुम्बरीयुपोभवत्युगवा उदुम्बर उर्कपशव उर्गर्जेवाका उर्कपशुनवरन्धे ।
Taaittiriya Samhitā (2-1-1-6.)

the descriptive clauses must be only taken as descriptions of what happens.

If language like that found in the above text were possible in a statute, and the question arose as to its intention then clearly the intention of the Legislature would have been assumed to be just as Jaimini takes it.

The above maxim is of great value and lays down the fundamental principle of distinguishing an obligatory from a non-obligatory text. This principle is practically the basis of Jimutavahan's reasoning in paras. 29 and 30, chapter II (Colebrooke). He recites the following text :

"Though immovables or bipeds have been acquired by a man himself, no gift or sale of them by him, unless convening all the sons."¹

You will see that this text relates to self-acquired property and says 'no sale or gift of the same'. The sentence is defective. Either the words 'must not be made' or the words 'should not be made' should be supplied. Now if the words 'must not be made' were supplied then you bring into existence a Vidhi, which would stultify the well-known Vidhi admitted by all, that a man has absolute power of disposal over his self-acquired property. It is evidently for this reason that Jimutavâhana would read it by supplying the words 'should not be made'; thus taking the clause as a mere precept or Arthavâda. So he boldly says that in such a case a gift or sale even if made is not null, for a fact cannot be altered by a hundred texts.² It is usual to

1 स्थावरं विपदस्यैव यद्यपि स्वयमर्जितं ।

असम्भूय सुतान् सर्वान् न दानं नच विक्रयः ॥

2 तथाहि कर्तव्यपदमवस्थमनाध्याहार्यं तेन दानविक्रयकर्तव्यतानि

charge Jimutavahana with the violation of judicial rules of construction in his above view. But the charge would not be justifiable if one should apply to the text in question the above-mentioned Mimāṃsā principle.

So much for the Vidhibannigadādhikarāna in this place.

I would now take up the Hetubannigadādhikarāna¹ (the topic of a descriptive clause in the shape of a reason) which lays down another important principle on the question of distinguishing an Arthavāda from a Vidhi. This Adhikarāna lays down that where there is the statement of a reason showing why a particular thing is enjoined in an applicatory Vidhi, this reason should not be taken as an essential part of the Vidhi, that is to say, the obligatory nature of the words of the Vidhi text is not affected by the statement of the reason. If it were so affected, then the Vidhi should cease where the reason would cease. This 'topic of the descriptive clause in the shape of a reason' consists of the following sutras :—

Hetubad-
nigadadhi-
karāna.

The objector :—“The reason must be taken as being the essence and the basis of the Vidhi.”²

Jaimini.—“A reason is but a gloss, as it is preceded by an operative clause and it does not form the mandatory term of that clause.”³

वेधात् तत्करणात् विध्यतिक्रमो भवति नतु दानाद्यनिषिद्धिः

वचनश्रुतेर्नापि वस्तुनोऽव्यथाकरणशक्तौ । Jimutavahana.

1 अथ हेतुवन्निरुद्धाधिकरणम् । Jaimini I. ii. Adhi. 3.

2 हेतुर्वासादर्थवत्त्वोपपत्तिव्याम् ॥ Jaimini, I. ii. 26.

3 श्रुतिसुब्रह्मपूर्वत्वादधीदना च तस्य ॥ Jaimini I. ii. 27.

Jaimini continuing—"If you say even as a gloss it would be useless."¹

He himself answers—"It will be useful as inducing men to a Vidhi in a popular way."²

The illustrative text is the following:—

"He sacrifices by a winnowing basket, because food is prepared by it."³

If the duty of sacrificing by a winnowing basket were subject to the reason that the preparation of food is assisted by it, then it might be said that the Vidhi is for sacrificing with anything which assists at the preparation of food, as for instance, fuel, &c. But the Vidhi is absolute that the sacrifice is to be made with the winnowing basket, no matter what service one expects from such basket. The statement of the service is merely a compliment, a mere popular praise to interest people in such a sacrifice. But it, in no way, affects the obligation itself and the consequence of its non-performance. It is merely an Arthavâda, not being included in the operative or the commanding clause, which is restricted to the use of the winnowing basket.⁴

You will see the force of this Adhikarana by looking to the instance of one of our Regulations. Lord Cornwallis's government in enacting the rules of Permanent Settlement states, among others, the reason for that settlement, that it would induce the zemindars

1 अर्थं कृतिरनाथेति चेत् ॥ Jaimini I. ii. 28.

2 अर्थस्तु विधिशेषत्वात्. यथा लोके ॥ Jaimini I. ii. 29.

3 इदमेव कुर्वीति, तेन अन्नं क्रियते ॥ Taittiriya Brâhmana (I. vi. 5.)

4 कृतिस्तु, अर्थपूर्वत्वादधीदना च तस्य ॥ Jaimini I. ii. 27.

to treat their tenants well. Now, if this reason were a part of the law, then the Permanent Settlement would be void in the case of a zemindar maltreating his tenants. There is no question, however, that the statement of the reason is no part of the law contained in the Regulation. It is merely what the Mimāṃsakas would call an Arthavāda, just as in the case of the Adhikarana mentioned above, the reason for using the winnowing basket at the sacrifice is an Arthavāda.

The sub-division of Arthavāda texts into Gunavāda, Anuvāda, and Bhūthārthavāda will be considered later on. It may be sufficient here to tell you that of these sub-divisions of Arthavādas, Anuvāda has the greatest importance in matters of law. Jimutavāhana, for instance, refers to this class of Arthavādas in his discussions on the text of Manu—"the father being dead &c."¹

As regards the class of texts called Nāmadheyas, the question of their character is a vexed one. Take for an instance the text :

Non-obligatory texts—
Nāma-
dheyas.

*Shyenena abhicharan yajeta.*²

It would appear that this is one of such texts that place an interpreter in an exceedingly perplexing dilemma. An interpreter is bound not to do violence to language, and at the same time, he is bound to be faithful to, and adhere to, the purpose and object of the law. Where there is a text which, on the one hand, is pretty clear in language, and of which on the other, to construe the language literally would be something against the declared object and purpose of the law, the

1 कर्त्तुं पितृस्य मातृस्य समेत्य यातव्यः समाः ।

भजिरन् पेदकं रिक्थमनीयात्ते हि जीवतोः ॥

2 श्येनेन अभिचरन् यजित ।

interpreter is in a fix. In such a case, if there be any possible construction by which the evil may be minimised, he would naturally resort to such a construction. Maxwell says :—

“A sense of the possible injustice of an interpretation ought not to induce judges to do violence to well-settled rules of construction, but it may properly lead to the selection of one rather than the other of two possible interpretations.”

With regard to the text in question, the Hindu interpreter would not only feel a ‘sense of possible injustice,’ but a sense of sin in taking the words literally. The text means, let those who are so minded perform the ceremony of hurting or destroying his enemy by the *shyena* (hawk).

Disagree-
ment as to
interpreta-
tion of
Sheyna text
between
Savara
Swami and
Kumarila
Bhatta and
others.

Kumarila Bhatta and others following him saw that the language of the above text was a language of a Vidhi, but the thing enjoined was furthest from the main object of the Vedas *viz.*, the attainment of spiritual or heavenly life. Thus situated, they interpret the text in the following way :—

They construe the word *shyena* as not having any real meaning at all, but being a figurative expression which is nothing but the name of a Yāga. They do not deny that the text is a Vidhi text, but practically they make it a mere nominal Vidhi, something like a parody of a Vidhi. But it would seem that this construction did not commend itself to the venerable commentator Savaraswāmi. According to him, this text was not a Vidhi text at all. He says that the sanction of every Vedic Vidhi must be the Apurva sanction of realising heavenly bliss (Swargakāma

Bhābanā), and this sanction being absent as regards this text, it cannot be a Vidhi at all.¹ So the venerable Swami would boldly read the imperative mood as an indicative mood, and take the text as merely a description to the effect that Shyena Yāga is a ceremony to do hurt to an enemy. Not only this text, the venerable Swami would read the text *Pashukamo udbhida yajeta* and the like texts as similar definitions. In the case of the text '*Pashukamo udbhida yajeta*,'—(those who want to have animals are to perform sacrifice by *udvid*) Swami would take the text to mean that the ceremony called vegetable Yāga is nothing but means sacrificing for animals. He would not take the imperative mood as Chodanā (command) with a sanction. He says there is no sanction in the above case. For, says he, after performing a ceremony for animals, no animal is found to be forthcoming. Therefore the object is not attained.²

This construction of the above texts by Savara Swami seems to be suggested by Sutra 2, Chap. IV, Bk. I. It is there laid down that "that text is Namadheya, of which in origination there is no Apurva sanction."³ This principle of construction is

१ तस्मात् भावार्थाः कर्मशब्दा अपूर्वं चीदयन्ति इति । अथ कस्मात् उभयम् सूचितम्, भावार्थाः कर्मशब्दाः इति । उच्यते, भवन्ति केचित् कर्म-शब्दाः न भावार्थाः यथा स्नि नैकचित्वादयः ।

Savara Bhāshya II. i.i.

१ उपलब्धकामिन् चिन्दिष्यामि पशुदीनां, नच, पशुकामेष्टानन्तरं पशवः उपलभ्यन्ते । अने नेष्टि पशु—फला ।

Savara Bhāshya .

२ अपि वा नामधेयं स्यात् यदुत्पत्तावपूर्वमभिधायकत्वात् ।

Jaimini I. iv. 2,

indeed an exceptional one, and such exceptional construction is not opposed to even modern ideas. See the following observation by Maxwell :

“ Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammar ; by giving an unusual meaning to particular words ; by altering their collocation ; by rejecting them altogether ; or by interpolating other words ; under the influence, no doubt, of an irresistible conviction, that the legislature could not possibly have intended what its words signify, and that the modifications thus made are mere corrections of careless language, and really give the true intention.”¹

You see from the above how modern ideas agree with the ancient, even in such an exceptional matter. I hope I have sufficiently explained to you the manner in which the Mimāṃsakas distinguish between obligatory texts and non-obligatory texts. I now proceed to explain the manner in which the Mimāṃsā writers distinguish between obligatory texts and quasi-obligatory texts.

Distinction
between
Vidhi and
Niyama
in their
application
to transcen-
dental object.

The distinction between a Vidhi and Niyama has been explained in the Introductory Lecture to a certain extent. It has also been explained that the Vedas deal with both the supernatural and transcendental

¹ Maxwell, 3rd edition, pp. 319-320.

as well as the natural and ordinary matters. The terms Vidhi and Niyama as applied to the transcendental have a sense which is not quite the same sense which they have when they are applied to ordinary matters. A Vidhi when applied to the transcendental object of heavenly bliss, is defined as being a law by observing which one secures what is otherwise absolutely not securable by ordinary means. Niyama when applied to the transcendental object is a rule, by observing which one secures, though not what is absolutely otherwise not securable, yet what is partially not securable otherwise. For instance, it is a Niyama when the Sruti declares that the paddy is to be unhusked by a particular process. In this case there is nothing transcendental in the process. Besides, the unhusking might be effected by other means as well. Then what is there in it which is not otherwise securable? The act of unhusking associated with a certain mantra forms the Niyama and not the act alone. The Apurva result, which is secured by the recitation of the mantra is the transcendental part of the sanction. This transcendental sense, in which the two terms Vidhi and Niyama are used, is shortly expressed by the Karikā explained before, *viz.*,¹

*Vidhiratyantapraptau Niyamah pakshike sati,
tatra chanyatra cha praptau Parisankheti giyate.*

But the Sutras of Jaimini clearly show that these terms, Vidhi and Niyama, when applied to ordinary matters in the shape of applicatory Vidhis, have the ordinary sense of being respectively imperative rules and

Niyama is
only a direc-
tory rule.

१ विधिरत्यन्तप्रप्तौ नियमः पक्षिके सति ।

तत्र चान्यत्र च प्रप्तौ परिसङ्केति गीयते ॥

directory rules. So the term Niyama is generally used by the Mimāṃsakas as only a directory rule. No doubt, sometimes it has the force of an imperative rule, as in a case where a Niyama is expressly made inflexible by shutting out provisions for substitution. But then a Vidhi also is sometimes lowered to the position of a Niyama according to circumstances. *Niyamārtha kwachit Vidhi*.¹ A Niyama may be said to be Guna-Sruti (subsidiary or incidental statements).²

In short, in the case of a Niyama enjoining the use of a thing for a certain purpose, if the thing enjoined be not available, any other thing which would serve the same purpose more or less may be used. This being so, a Niyama is not very far from being a quasi-obligatory text. Yet one may not be fully justified in calling a Niyama a quasi-obligatory text in all cases. But if one hesitates to call a Niyama text a quasi-obligatory text, there can be no such hesitation as regards texts which are called Parisankhyā, which simply declares that certain things are fit to be done. That a Parisankhya by implication forbids the doing of what is not included in the declaration by the principle of *Expressio unius est exclusio alterius* is not admitted to be correct by the best Mimāṃsā authorities.

Distinction
between
Kratu-dharma
and
Puru-
shadharma.

Again the distinction that the Mimāṃsakas make between what they call Kratu Dharma and Purusha Dharma is clearly the distinction between a positive law and a quasi law. In the Adhikarana regarding the subject of wearing gold ornaments,³ there is the following text :

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- | | |
|--|--------------------------|
| 1 नियमार्थं क्वचित् विधिः। | Jaimini VI. iii. 16. |
| 2 नियमार्था गुणश्रुतिः । | Jaimini III. iv. 40. |
| 3 सुवर्णधारणादीनां पुरुषधर्मादाधिकरणम् । | Jaimini III. iv. Adhi. 2 |

'Bright gold (ornaments) are to be worn : his enemy becomes pale : he obtains beauty who wears beautiful clothes.'¹

It is laid down by the Adhikarana that this text gives only a direction that men should wear ornament and good dress when engaged in a solemn ceremony. It is not a duty incumbent on a man in connection with the ceremony. It is a thing good for a man to do, and that is all. In short, it is a rule about the social conduct of a man. The Sutra on the subject runs thus:

Several illustrations of the Puru-shadharma.

"Not being connected as Prakarana (subordinate act to a thing positively enjoined), and being separable from it, texts like the above Vedic texts constitute only Manushyadharma (a duty of individual conscience)."²

With regard to the above Sutra Savaraswami says as follows :

"Is this a subsidiary enjoined duty, or is it merely a duty of the man ? The answer is, not being connected as Prakarana (subordinate act to a thing positively enjoined), and being separable from it, texts like the above Vedic texts constitute only Manushyadharma (a duty of individual conscience). Why so ? because it is not within the scope of the particular subject enjoined. Nevertheless it is a general direction, so it should be generally attended to."³

1 तस्मात् सर्वं हिरण्यं भार्यम् ।

सुवर्णं एव भवति । सुवाससा भवितव्यं रूपमेव विभर्ति ॥

Taittiriya Brahman II. ii. 4. 6.

2 अप्रकरणे तु तदर्थः ततो विशेवात् । Jaimini, III. iv. 20.

3 तत्र किं प्रकरणाधर्मः उत पुरुषधर्मः, ? इति संशयः । अत्र उच्यते, अप्रकरणे तदर्थः, ततो विशेवात्, पुरुषधर्मः एव ज्ञातीय वा स्यात् । कुतः ? प्रकरणाधीनात्, विशेषोऽस्य नाथं प्रकरणाधीनः, यदि अप्रकरणे समावातः, सर्व-

Similarly in the Adhikarana about the impropriety of conversing with a woman in dirty clothes,¹ it is laid down that the rule bears on the general moral conduct of man². Again in the Adhikarana corresponding to Sutra 17, Chap. IV, Book III., called *Abagoranadinam pumarthatadhikarana*³ (the topic of the sinfulness of assaulting &c., a Brāhman, being a direction regarding common life), the same principle is laid down.⁴ With regard to the text providing for penance to those who assaulted a Brāhman or otherwise maltreated him, the Adhikarana lays down that this is a provision regarding the general duty of a man, and has nothing to do with any particular ceremony enjoined. There are many other Adhikaranas (topics) of this character. I should refer one other of them as being of a very important nature. This is the Adhikarana regarding the duty of performing the Agnihotra ceremony.⁵ There is a text, *abijjibamgnihotram yuhoti* ("Agnihotra should be performed throughout life").⁶ With regard to this text the objector says that the expression 'for life' is connected essentially with the Agnihotra sacrifice itself. He means to say that if Agnihotra is not performed throughout the life-time of a man, it ceases to be Agnihotra. Jaimini's conclusion

प्रकरणं धर्मः ज्ञातः, चप्रकरणे समाधानं न कश्चित् विशेषं कुर्यात् । सञ्ज्ञात् एवञ्चातीयकः पुनरुपधर्मः इति । Savara Bhashya III. iv. 20.

1 मलवशासः संवाद निषेधस्य पुनरुपधर्मताधिकरणम् ।

Jaimini III iv. Adhi 7.

2 प्रागपरीक्षात् मलवशासः ।

Jaimini III. iv. 18.

3 अवनोरक्षादीनां पुनर्यथाधिकरणम् ।

Jaimini III. iv. Adhi 6.

4 ग्रंथौ च सर्वपरिदानात् ।

5 अथ यावज्जीविकप्रिहीनाधिकरणम् ।

Jaimini II. iv. Adhi 1

6 यावज्जीवमग्निहोत्रं जुहोति ।

is that the instruction for performing "for life" is an instruction for the man in connection with the Sruti.¹ The Sruti by virtue of which the direction is made relates to the moral duty of a man. It says that if a man does not perform Agnihotra in the last stage of his life or before death, then he would suffer such and such consequences. Accordingly the conclusion is that the rule, so far as it speaks of whole life, is directory. It would be enough if a man perform the sacrifice before his death. You will thus see that this distinction between Kratudharma and Purushadharma is really one between a rule of positive law and a rule of conscience. The Shashtra writers would not derogate from the importance of the latter class of rules (rules of conscience) by calling them quasi-law. But all the same according to our modern terminology the term "quasi-law" would be quite applicable to this class of law.

The injunctions regarding the carrying out of sacrifices relate to specific and definite matters. Moreover the rules regarding these, have to be administered by certain constituted authorities, *viz.*, the priests assembled for the occasion of each Yajna. They constitute a sort of ecclesiastical tribunal. So these rules relating to Kratudharma fulfil the conditions of positive law. On the other hand what is called Purushadharma (duty of conscience) is something of a general character. So even from the Vedic point of view they could not be included within the definite and strict rules of sacrificial duty. No doubt they are of higher importance than sacrificial duties. This is admitted by the Mimāṇasakas. With reference to the 1st. sutra of

१ कर्तव्यवृत्ति संयोगात् ।

Jaimini II. iii. 2.

chapter I, Book IV., Savara Swami says that the purpose of the Kratu ceremony is subordinate, the purpose of Purusha is principal.¹ This is unobjectionable. Who can deny that moral law and spiritual law are higher than the municipal law? Still from a juridical point of view the latter are called the positive law or law proper, and the former is called only imperfect law or quasi-law.

Our digest writers both Jimutavahana and Vijnaneshvara make the distinction between what is positive law and what is merely a moral precept. Many regard this to be a new idea introduced by these writers to suit their views. But you see from the above that the distinction is an old one and it is to show you this that I have taken you through the discussion of the Mimāṃsakas regarding the Purushadharma and Kratudharma.

Arthakarma
and Prati-
pattikarma.

There is another form in which the Mimāṃsakas practically distinguish between a Vidhi and a quasi-vidhi. They make a distinction between what is called Arthakarma (work for the main purpose) and Pratipattikarma (works merely incidental thereto). In fact, the distinction between the Arthakarma and Pratipattikarma, corresponds to what English writers on interpretation make between conditions which are essential to the intention of the Legislature and incidental conditions which are merely directory. Maxwell observes as follows:—

“The reports are full of cases without any such indications of intention; in some of which the conditions, forms, or other attendant circumstances prescribed by

१ अङ्गं क्रतुर्धर्मः, प्रधानं पुरुषार्थः ।

the statute have been regarded as essential to the act or thing regulated by it, and their omission has been held fatal to its validity ; while in others, such prescriptions have been considered as merely directory, the neglect of which did not affect its validity or involve any other consequence than a liability to a penalty if any were imposed, for breach of the enactment. The propriety, indeed, of ever treating the provisions of any statute in the latter manner has been sometimes questioned ; but it is justifiable in principle as well as abundantly established by numerous authorities."¹

The distinction between Arthakarma and Pratipattikarma (essential act and non-essential act) is fully explained by Jaimini in chapter II, Book IV, from sutras 10 to 22. The texts regarding the essential acts must be taken as obligatory texts but those regarding the non-essential acts are, of course, of a quasi-obligatory character. I think that you will be now able to see that all our Shashtra texts are not obligatory, some of them are non-obligatory ; while of the others, there is a large number which are of a quasi-obligatory character. You have also seen how the Mimāṃsā writers distinguish the texts in this respect between each other.

Texts regarding Manushyadharma (general morals) are certainly obligatory as laws of conscience compared with Arthavāda texts which are not obligatory at all. Consequently, the Mimāṃsā writers take great pains to distinguish cases of Manushyadharma and those of Arthavāda. For instance, in the very first Adhikarana of chapter IV, Book III, there is the discussion regarding the following text. " The Nivita (particular kind of sacred

Manushya-
dharma and
Arthavada.

¹ Maxwell, 3rd. edition. pp. 519-20.

thread) is of the men; the Prachinavita (particular kind of sacred thread) is of the manes; the Upavita (particular kind of sacred thread) is of gods. He, indeed, makes a sign of god when he wears Upavita (the last mentioned kind of sacred thread).¹ With regard to this text the question raised is whether the clauses describing that the Nivita is of men, and that the Prachinavita is of departed spirits, should be read severally with the operative clause which indicates the duty of wearing, although this expressly relates to Upavita; or that these clauses are mere Arthavâdas to show the importance of the Upavita which is the sign of the gods. The conclusion is that the above-mentioned two clauses are merely Arthavâdas. This Adhikarana, though apparently foreign to the subject of law, is not really so, for it may well bear upon the construction of the texts of Manu describing several kinds of marriage; one of which, *vis.*, the Brâhma form being said to be preferable to the rest may be taken as the Vidhi proper.

Manushya-
dharma and
Kratu-
dharma.

There is one more Adhikarana which I may well mention here, in connection with the distinction between Manushyadharma and Kratudharma. This Adhikarana is the Anritavâda Nishedhâdhikarana² which is covered by sutras 12 and 13 chapter IV, Book III. In this Adhikarana the text under consideration is *Na anritam vadet.*³ The question raised

1 निवीतं मनुष्याणां प्राचीनावीतं पितृनामुपवितं देवानामुपवदते ईश-
सन्धीमेव तत कुर्वते इति ।

Taittiriya Samhita (2, 511, 1).

2 अश्रुतवाद् निषेधाधिकरणम् ।

3 नाश्रुतं वदेत् ।

is whether this precept to avoid speaking falsehood is merely a moral precept (Purushadharma) ; or it is a positive law regarding the Darsapaurnamasi Yaga. The opponent wants to make it to be merely an Arthavâda though of a general and permanent character (Nityanuvâda). The decision is that it is neither an Arthavâda nor a Purushadharma but it is a part and parcel of the injunction of Darsapaurnamasi Yaga, and as such it is a positive Vidhi. The effect of this conclusion is as follows :—

As under our present criminal law if a man speaks a falsehood under an oath he is to be punished, but not so when he speaks a falsehood simply; so by making the text Kratudharma, the man who speaks a falsehood when engaged in a Yaga ceremony, is not simply liable to be condemned as a liar, but is liable to be punished by penance. This explains clearly the distinction between the Manushyadharma and the Kratudharma.

Section 2. The Remaining Principles of Application.

Now I proceed to the remaining topics connected with the application of texts, such as those of Adhikâra, Krama, Atidesha, Uha and Badha, &c. According to the Mimânsâ writers, Jaimini's work is divided into two halves ; the first half containing the first six books, and the second half the remaining six books. The first half is called the first shataka and the second half, the second shataka. The general principles of interpretation, discussed in the preceding lectures are contained in the first shataka. The first shataka also contains certain topics of application, *viz.*, that important class of rules, called the Adhikâra Vidhis

The
distribution
of topics as
made by
Jaimini.

(the rules, indicating rights, as opposed to rules imposing duties) ; and also the class of rules called Krama Vidhis which regulate the order in which things are done. The second half generally relates to the mode in which the rules of conduct prescribed in connection with one topic are to be applied to other topics. This half treats of what are called Atidesha (rules of reference, general and special), the rules regarding Uha (principles of adaptation), those regarding Bâdhâ (bar), and those principles or axioms called Tantratâ and Prasanga (already explained), which have convenience for their object. Adhikâra Vidhis (rules regarding the right to perform prescribed acts), and Krama Vidhis (rules as to the order in which prescribed acts are to be done), are respectively treated in the sixth and fifth chapters of the first shataka.

**Adhikara
Vidhis.**

Jaimini's sutras generally deal with law as imposing a duty (Dharma). But in the class of Vidhis, called Adhikâra Vidhis (Vidhis relating to title and capacity), the principle of creating right is introduced. The Utpatti Vidhis impose on men duties to be performed in the shape of sacrificial acts. The Adhikâra Vidhis, on the other hand, lay down conditions as to how a man is entitled or has the right to perform sacrifices. Jaimini's chapter on the Adhikâra Vidhis does not stop with discussing the question as to who are entitled to perform sacrifices ; but also incidentally discusses the question as to rights of property. For a sacrifice requires the use of things including moveable and immoveable property. So, he has to discuss the question of a man's right to dispose of one thing or other by way of gifts. In fact, Jaimini discusses

the principle of proprietary right. This he does in connection with the Viswajit Yaga in chapter VIII, Book VI. These discussions will be dealt with later on.

The general idea of the Hindu Shastras is that a right implies a duty. Where a man cannot perform the duty, he cannot acquire the right. The right of inheritance and succession, according to the Hindu idea, depends upon the man's capacity and ability to discharge certain duties belonging to the family, which he is to represent by succession. Therefore, if he is physically unfit to discharge such duties, he is debarred from the right of inheritance, just as a person who would not or could not read the Vedas is disentitled from performing the Vedic sacrifices. Thus Jaimini's Adhikaranas regarding the qualifications of the sacrificer and the conditions to which he is subject, are exceedingly useful in understanding the principles of the Smṛiti law of exclusion from inheritance^a and also the principles therein contained creating disabilities. Shortly, it may be said, that the principle laid down by Jaimini in this connection is, that no man should be required to do what is beyond his power or what is impossible for him to do. So the blind, the lame, and the dumb are not qualified because they are incapable of doing the main ceremony and all its Angas, and because the omission even of one Anga will render the ceremony infructuous. It may be noted that one, whose organs of sense are impaired, may perform Yâgas after the organs of sense are restored to their normal condition.

The germ of the principle of exclusion from inheritance contained in the Jaimini's Sûtras.

Competency
of women to
perform
Vedic
ceremonies
in ancient
times.

The third Adhikârana of the first chapter of the sixth book is very interesting, as it throws considerable light upon the position of women in ancient India. This Adhikârana¹ decides that women are competent to perform ceremonies. The Purvapaksha (opposite view) showing reasons to the contrary, is stated as follows: "Women have no money. What money they get becomes the property of the husband, the moment they acquire it. Women are bought and sold, and are on a level with chattels."² The Siddhantin answers, "women possess the desire and the capacity to perform Yâgas equally with men. Women have control over money, and men require their sanction to make gifts. The custom of making a gift to the bride's father at the time of the marriage cannot make the transaction a sale and purchase. The same number of kine are presented to the fathers of brides pretty and not pretty. If it were a transaction of sale, the price would vary with the merit of the girl. The gift is made because it is prescribed by the Smṛiti that it is a Dharma."³ It may be also noted that the

1 यागादिषु स्त्रीपुंसोक्तभयरीरधिकाराधिकरणम् ।

Jaimini VI. i. Adhi. 3.

2 द्रव्यवस्त्वानुपुंसां स्यात्, द्रव्यसंयुक्तं कथयितुं शक्यं च द्रव्यत्वं स्त्रीणां द्रव्यैः समानयोगित्वात् ।

Jaimini VI. i. 10.

See also Savara Swami.

भार्या दासश्च पुत्रश्च निर्दिष्टाः सर्वे एव ते ।

यत्ते समधिगच्छन्ति यस्तु ते तस्य तद्वत्तम् ॥

3 कस्तीक्षादाविज्ञेयान् ।

Jaimini VI. i. 13.

अर्थेन च समवेतत्वात् ।

Jaimini VI. i. 14.

कथयत्यर्थमात्रत्वं ।

Jaimini VI. i. 15.

See also Savara Swami.

husband and the wife should jointly perform the Yāgas.

Adhikara Vidhis embrace questions regarding the obligation of performing Kāmya Yāga ; for instance, the text "If in the middle of the performance of a Kāmya Yāga, the desired fruit is obtained, this is no reason that the sacrifice is to be discontinued". The question of a proper substitute for a prescribed material is also discussed in the course of Book VI. The nature of a ceremony is not altered, because, in the absence of a prescribed material, a substitute is used. A ceremony cannot be omitted for the simple reason that the prescribed material is unavailable ; for a proper substitute may be used in the place of the prescribed material. There cannot be, however, any substitute for the essential things in a sacrifice. There can be no substitute for the Devata, the fire, or the mantra ; nor can one sacrificer be substituted in the place of another, except in the case of the Satra Yāga, in which a substitute may be appointed for a sacrificer, if one of the 17 Yajamānas (sacrificers) die in the middle of the ceremony. In this case, however, the Yajamāna who is substituted will not derive the fruit of the Yāga ; for one must work from the commencement to get it, the deceased Yajamāna will enjoy the fruit. A substitute must be as like the original as is possible. This is the basis of the principle of Hindu Law that the adopted son must be the reflection of a son. Again, in performing prescribed transactions one should not mind trifling defects, such as cannot generally be avoided, though radical defects are not to be condoned. As, for instance, where the Purodāsha is wholly

Matters
treated
under
Adhikara
Vidhis

burnt, the Yaga is to be performed anew; if it is only slightly burnt, you may continue the Yaga, because such an accident is common. These are indications of conditions subject to which a man's right to perform a sacrifice is to be exercised. In many instances, they suggest the character of the conditions, which may attach to the exercise of a person's civil rights.

Having given you a running view of what constitutes the subject of Adhikāra Vidhis according to the Mimāṃsakas I shall now single out some important topics on this question for discussion.

Status of
women and
sudras

The two most important questions in Hindu Law in the subject of Adhikāra (status) are the questions of the status of women and sudra. On both these questions the aphorisms of Jaimini are more liberal, as already observed, than later Brahminical writings. In connection with the status of women Jaimini broadly lays down:—"In the opinion of Badarayana, all without any distinction of class who desire heaven can perform sacrifices. A woman, therefore, is included because there is no class distinction."¹ In fact, in the case of married people, it is laid down that a married couple with means must join in the same act of sacrifice by virtue of an expressed text.²

But even as regards the status of sudra the aphorisms are very liberal in spirit. This subject is the topic of 7th Adhikarana which begins with Sutra 25 Book I, chapter VI. No doubt by this Adhikarana it is settled that by virtue of a Brahmana text of Rishi

¹ जतिं तु बादरायणोऽविशेषात्, तथात् स्त्रियं प्रतीयेत जात्यर्थसावि-
त्रित्वात् । Jaimini VI. i. 8.

² स्वयतीक्ष्णं वचनादेककर्म्यं स्यात् । Jaimini VI. i. 17.

Atreya, a sudra is excluded from the Agneya Yagas; but the reasons, given do neither involve any contempt for the class nor attribute any inferiority to them. The reasons are that a sudra is not connected with any Agneya ceremony, and that there is an express text declaring the competency of three classes only in matters of Yajna. In fact, the general tenor of all the aphorisms from the beginning of the chapter is to the effect, that *prima facie* all rational beings are entitled to the benefit of sacrificing if they appreciate the object of it. The first Adhikarana lays down that there must be thinking men to perform a sacrifice and that the acts of sacrifice mechanically performed secure no object. This Adhikarana shows that the qualification for sacrifice is ability to perform it rationally and a consciousness of its object. This general enunciation *prima facie* entitles men of any class to perform a sacrifice provided he is not positively disqualified. The author declares a sudra disqualified by virtue of some expressed texts. You will thus see that according to Jaimini the presumption is in favour of qualification until the contrary is shown. So in all cases of mixed castes it is not proper to hold that the men belonging to such castes are disqualified. And you will see further that the disqualification of a sudra seems to be limited only to the Agneya ceremony.

Krama Vidhis.

Adhikara Vidhis are intended to show to what persons particular Vidhis are applicable. The class of Vidhis called Krama Vidhis (rules as to the succession of things) indicates in what order rules and injunc-

General
explanation
of Krama
Vidhis.

tions are to be carried out. The order in which things are mentioned one after another shows their relative importance. As such, it constitutes itself a principle of construction called Krama. But that is a different thing from the Krama Vidhis or rules to determine what act should precede and what follow, in other words, in what order texts are to be applied.

The three
chief
Kramas.

(1) The order of succession is sometimes declared by express Srutis. This is called Sruti-Krama.

(2) In the absence of express Sruti it has in some cases to be determined by the sense of the passage. This is called Artha-Krama (determination of order by sense).

(3) It is sometimes indicated by the order in which the texts appear. This is called Pâtha-Krama (succession by reading).

Besides these methods, there are three others, two of which I need not mention, being of an unimportant character ; the remaining one called Prabritti-Krama (order by discretion) relates to the case in which the things are strictly speaking to be performed simultaneously, but convenience requires to perform them successively. Jaimini enunciates the Sruti-Krama in the 1st sutra of chapter I, Book V, which runs as follows :—

“ What is to be done before and what after is best determined by the indications in Sruti, Sruti being the authority.”¹

Artha-Krama is indicated by the next Sutra which says :—“ It is also fixed by the sense.”²

1 अतिलक्ष्यमानपूर्व्यं तत्प्रमादत्तात् ।

Jaimini VI. i. 1.

2 अर्थान्न ।

Jaimini VI. i. 2.

The third method *viz.*, that of fixing the order by the relative position of the texts is the subject of the third Adhikarana (sutras 4 to 7) of the same chapter and the same book. The last of the methods mentioned above *viz.*, Prabritti is the subject of the 5th Adhikarana. The Siddhanta sutra of this Adhikarana runs as follows :—

“Of those which are to be done simultaneously, the order is determined by discretion with reference to minor considerations, as these form an index.”¹ This Adhikarana contemplates cases, in which, though strictly the things are to be done simultaneously, yet there is no harm in doing them successively. But where certain things must occur simultaneously, simultaneous performance must be observed. In the Vyavahara law the rules regarding order come into play with reference to the question of succession of heirs. One instance from Jimutavâhana will explain the importance of the Krama rules. With regard to the succession of a woman's children to her separate property, Jimutavâhana cites the following text of Manu. “When the mother is dead, let all the uterine brothers and the uterine sisters equally divide the maternal estate.”² This text does not clearly indicate as to whether uterine unmarried sisters and uterine brothers are to take the property simultaneously or one class after the other ; for the word “equally” has no indication in this respect: it may simply mean that there should be equality among brothers when they take and similarly equality

The bearing
of Krama
upon
Vyavahara
law.

1 प्रवृत्त्या तुल्यकालानां युक्तानां तदुपक्रमात् । Jaimini V. i. 8.

2 तत्र मनुः—जनन्यां संस्थितायानु मम सर्व्वेसहोदराः ।

भजेरन् मातृकं रिक्तं भगिन्यश्च समाभयः ॥

among the sisters when they take. Thus this is not a case of the Sruti-Krama. Failing Sruti, one must try Artha-krama (the method of determining the order by sense).

It appears from Jimutavāhana's discussions that, some argue, that as there is another text which declares the right of the daughter in preference to the son, the text in question must be construed as giving preference to unmarried sisters to the brothers. Jimutavāhana refutes this contention by showing that the text declaring the preference of the unmarried daughter to the son relates to Yautuka (property acquired at the nuptial fire) only. Thus he shows that the method of Artha-Krama as relied on is not applicable. The Pātha-Krama is also not applicable, because the words "brothers" and "sisters" occur in the same sentence. So the text is to be interpreted as laying down the simultaneous succession of brothers and unmarried sisters. And this is what Jimutavāhana holds to be the case. He points out that although the words "brothers" and "sisters" are not in the *dwandva samasa* (conjunctive compound) which would have made the case absolutely clear, still the use of the conjunctive particle *cha* (and) shows that brothers and sisters are placed on the same footing by this text. From this discussion you will see how the rules regarding the order of sequence are of practical importance even in the Vyāvahāra law.

Atidesha,
Uha and
Bādha.

Now I proceed to the last three general principles enunciated under the head of application of texts *vis.*, Atidesha (principle of reference), Bādha (the principle of incongruity), and Uha (the principle of adaptation).

These three principles have their origin in the fact that in ancient as in mediaeval times, great importance was attached to the classification of cases. All the jurisprudence of the old English law consisted in the sharp lines of distinction which were observed between the different classes of recognized litigation; such as Real Action, Action in Ejectment, Debt, Assumpsit, Covenant, Detinue and Trespass on the case, Trover and Replevin. Similarly in the Smṛiti Vyavahara law, the only thing in way of methodical treatment, is the division of the subjects of litigation under eighteen heads, each head well-demarcated from the other; such as Debt, Deposit and Pledge, Sale without ownership, Partnership, Gifts, Wages, Agreements, Rescission of sale or purchase, Master and his herdsman &c. In each of these heads of litigation when a case arises in which a rule of substantive law creating a right or imposing an obligation, has to be enforced, a variety of minor rules (applicatory Vidhis) becomes necessary for such enforcement. Such minor rules are to a great extent common to all the heads of litigation. They are however generally mentioned under one head only—the head that is considered the principal. For instance, in the case of the eighteen heads of litigation given by Manu, the rules of evidence are only mentioned in detail under the head of "Debt" only. But these are equally necessary for the other heads. How can a litigation, say for instance, under the head of "Master and his herdsman," be carried on without the rules of evidence. So when a case would arise under the latter head requiring evidence, the court would use the rules of evidence given under the head of "Debt," as if there were a reference to those rules by a

The necessity of
Atidesha
how arises

provision under the head of the litigation called that between "Master and his herdsman." Similarly, in the Vedic law in which the objects of law are Yajnas (sacrificial acts) and not actions of litigation, we have an enumeration of the Yajnas and the principal among these classes is the Darshapaurnamasi. This is the model Yajna. The full complement of applicatory rules and rules of procedure is given under the head of this Yajna. This being the case, as regards other similar Yajnas or those forming its varieties, for which there are no applicatory or procedure rules mentioned, the want must be supplied from the rules of Darshapaurnamasi which is the Prakriti (the model). Roughly speaking an Atidesha is a reference of this nature and Uha and Badha are incidental to such a reference. It should be mentioned that the word Prakriti is a relative term and Darshapaurnamasi is not the only Prakriti.

Jaimini's
treatment of

The principle of Atidesha has been treated by Jaimini in chapters VII and VIII. The meaning of the word Atidesha is defined in the following verse.

"If, what is prescribed as a duty with regard to one object, applies to another object, this is called Atidesha."¹

As already indicated, Jaimini applies this principle to the performance of sacrifices. The Prakriti is that sacrifice, every Anga of which is fully described by Sruti itself. The Vikriti is a sacrifice, the Angas (details) of which are not described by the Sruti. By the principle of Atidesha we must infer that all the

१ अथैव प्रचीतायाः कृताया धर्मसङ्गतः ।

अथन कार्यतः प्राप्तिरितिदेशः स उच्यते ।

Angas, prescribed for the Prakriti are impliedly intended for the Vikriti also. As for example, all the Angas of the daily Agnihotra are expressly dictated by the Sruti. 'The monthly Agnihotra is prescribed by the Sruti "Monthly Agnihotra should be performed."¹ But the Angas (details) of it have not been mentioned anywhere. Apurva can be produced only by the performance of a ceremony with all its Angas. It is, therefore, necessary to find the Angas of the monthly Agnihorta ceremony. By the commonness of the name, a reference is implied as regards the details of the monthly Agnihorta to the daily Agnihotra. In some cases the Atidesha is made by the Sruti itself, as in the case of Ishu Yāga.

Savara Swāmi explains Atidesha as follows :

"Atidesha takes place when a duty prescribed in one place is taken out of that place and is applied elsewhere ; as for instance, when having laid down that Devadatta is to be entertained with rice, meat, soup and pudding, one says that Yajnadatta is to be similarly entertained. The following sloka embodies the principle.

Savara
Swami's
explanation
of it.

"When duties are transferred from a standard (Yajna) to another of the same character, to serve as duties therein, this is a case of Atidesha. That Atidesha is of a two fold kind, either by name or by statements. The former is of three species, by name of action, that of the ceremony accompanying it, and that consisting of a derivative term. The latter is of two kinds, by an express direction, and by an inferential process."²

1 मासमग्निहोत्रं जुहोति ।

2 अतिदेशो नाम ये परत्र विहिते कर्मा, तन्मयीष्व अन्वये तेषां देशः, यथा, देवदत्तस्य भोजनविधिं कृत्वा ब्राह्मणमासापुषेः देवदत्तो भोजयितव्यः इति तमेव

Jaimini treats of Atidesha in general in Book VII. In Book VIII, he explains what is called special Atidesha. It is an Atidesha which cannot and should not be vaguely presumed. It must be specifically indicated by a definite relation (vishesha), and that relation is defined as follows :—

“It is a relation in which one thing contains the indication of another thing and deriving its force from that other would become an incident of it.”¹

The second Adhikarana in Book VII lays down the important principle that Atidesha takes place between two Vidhis or two ceremonial duties belonging to the same class.²

Illustrations
of Atidesha
from Achara-
kanda.

Numerous illustrations of the principle of Atidesha can be gathered from the Achara-kāṇḍa of the Smritis. As, for instance, the text directs that the offering of water with sesamum, ghrita and honey, which is to be made after the Pinda in Pārvana Srādh, is to be performed like the Argha ceremony of the same Srādh; that is, as in the latter case the offering is to be made to six ancestors separately, so in the former.³ The direction in the Srutis that the Srādh ceremony of maternal grand fathers should be done in a manner

विधिं यज्ञदत्तेऽतिदिशति, देवदत्तवत् यज्ञदत्तो भोजयितव्यः इति । श्लोकमपि उदाहरन्ति,—

प्रकृतात्कर्मणो यस्मात्तत्समानेषु कर्मसु ।

कर्मं प्रदेष्टो येन स्यात् सोऽतिदेशः इति स्थितिः ॥ इति,

स च नाद्या वचनेन वा तत्र नाम विविधं अतिदेशकं, कर्मणाम्, संस्कार-
नाम्, शौनिकम् इति । वचनं पुनर्विविधं, प्रत्यक्षश्रुतं, आनुमायिकं च ।

1 यस्य लिङ्गमर्थसंयोगादभिधानवत् । Jaimini VIII. i. 2.

2 समानमितरच्छेदेनेतिभ्युक्त्या इषो श्रेणीयविशेषधर्मातिदेशाधिकारवत् ।

3 अच्युतदत्तदानम् अर्चदानवदित्येते ।

similar to what is done in the case of father, grandfather etc., is also an illustration of Atidesha.¹ The Parvana Srâdh in honour of the paternal ancestors is in the nature of Prakriti to the Parvana Srâdh in favour of maternal ancestors which is the Vikriti of the former. This fact is of great importance in the Dâyahaga school in which the number of Pindas given enters into reckoning in settling the order of succession, but is not necessarily decisive in all cases. As already pointed out a Prakriti is not in all respects equal to its Vikriti, it being after all but a copy.

Other illustrations similar to those mentioned above may be given from the texts of the Smritis.

According to the author of Tantrarâtnâkara not only the manner of doing duties, but also the duties themselves can be implied by Atidesha.² Jaimini confines the principle of Atidesha chiefly to the practice that the Vikriti Yaga is done in a manner similar to that of the Prakriti Yâga, to which the Vikriti Yâga relates. This principle the Smriti writers have extended to matters of Srâdh and the like.³ As, for example, the Srâdh ceremony done during the new moon is regarded as the Prakriti, while the other Srâdh ceremonies are regarded as Vikriti of the Prakriti. But later writers have extended the application of the principle yet further. They have classified the principle of Atidesha thus :

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- 1 मातमहानामये वं यादं कुर्याच्चिचक्षम् ।
 - 2 प्रकृतात्मन्मन्त्रो यज्यात् समानेषु कर्मसु ।
मन्त्रोतिदिश्यते येन सीऽतिदेश इति सूतः ॥
 - 3 प्रकृतिचिचक्षतिः कर्मव्याः ।

(1) Shâstrâtidesha,¹—reference as regards the principle.

(2) Kâryâtidesha,²—reference as regards the actions.

(3) Nimittâtidesha,³—reference as regards the cause.

(4) Sangâtidesha,⁴—reference as regards the denomination.

(5) Rupâtidesha,⁵—reference as regards the form.

Our present law of Civil procedure provides general rules of procedure which are also adopted in miscellaneous cases by express reference or otherwise. The Atidesha, of old, is of a similar character. In some modern writings, the word Atidesha is sometimes used in a different sense. The word is used in Raghunandana's Malamâstattva to indicate a case where, by remote analogy, a rule of law laid down in one case is by straining applied to another case. To attach such a sense to the word, I must say, is not in accordance with sense in which Jaimini and the generality of writers use the word, but rather indicates an abuse of the principle of Atidesha.

The principle laid down by modern Hindu lawyers such as Mâheswara and Chudâmoni, that a rule found to be good with regard to one case is applicable to other analogous cases, is really derivable from the principle of Atidesha. This principle of analogy

1 शास्त्रातिदेश ।

2 कार्यातिदेश ।

3 निमित्तातिदेश ।

4 सङ्गातिदेश ।

5 रूपातिदेश ।

should not be strained and forced. To do so would be an abuse of Atidesha. Chudāmoni says in his note to sections 31-2-4 Dāyabhaga: "Although this property relates to the case of a superceded wife, yet it may be so assumed in the present case also, conformably with the maxim, that the sense of the law, as ascertained in one instance is applicable in others also, provided there be no impediment." This is an illustration of a practical application of the principle of Atidesha to the general requirements of the positive civil law. Another such illustration is found in para 36, section 2 of the Dattakachandrikā, where the author applies to Dattaka sons, what apparently only apply to the Kshetraja. But where a brother's son is said to be equal to a son, and a co-wife's son is said to be equal to a son, all that is meant is that for certain purposes, they are as beneficial as a son of the body.

Application
of Atidesha
to the case of
the adopted
son.

The Prakriti (pattern) Yāga and the Vikriti (the derived) Yāga must be of the same genus (samana). Turning to the law of adoption, you will see that the begotten son is to the adopted son as a Prakriti Yāga is to its Vikriti. As regards the son there is a full complement of rules as to his rights and status. There are no such exhaustive rules regarding the adopted son. But he is to be regarded as the reflection of a son. The rules regarding the rights and status of a son must apply to him by Atidesha, just as the rules of the Prakriti Yāga apply to its Vikriti. But there are limits to such application provided by express texts in the shape of exceptions (badha). This will be explained later on.

Similar application to the case of Hindu Wills.

Similarly it may be said that in the Bengal school, gift stands to will as Prakriti to Vikriti. The law of wills is newly developed. It is based on the analogy of the law of gifts. Hence the principles which govern the law of gifts must be applied to the law of wills. Accordingly in *Tagore v. Tagore*, their Lordships of the Privy Council have held that, a bequest to an unborn person is not valid as a gift to an unborn person is not. But in applying the law of gifts to that of wills the principle of Atidesha must be subjected to certain limitations (Badha). According to the *Dayabhaga*, a gift cannot be revoked. But a will can be revoked by the man making it. Even as regards the question of bequests in favour of unborn persons, the law of gifts perhaps should not be absolutely applied to all such bequests. For, certain persons may not be in existence during a testator's life time, but the testator is bound to make provision for their maintenance. Thus it may be properly contended that a provision made by a will for the maintenance of such persons, though not in existence at the time of the death of the testator, is valid by virtue of the express text of Manu regarding the duty of maintaining those who are born and those who may be born. This text is referred to by the *Mitakshara* as well as by the *Dayabhaga*. The case of *Tagore v. Tagore* has not indicated any exception as above. But I put it as an exception which possibly might have been well made; and all I wish you to understand in this place is, that such an exception, if made, would constitute a case of applying the principle of Atidesha subject to a legitimate exception (Badha). I will conclude the topic of Atidesha by pointing out to you that

in modern legislation when a general Act is expressly incorporated into a special one this corresponds to an Atidesha by Sruti. That in working out such Atidesha, certain adjustments are to be made is indicated by Maxwell as follows :

“Where a general Act is incorporated into a special one, the provisions of the latter would prevail over any of the former with which they were inconsistent. It may be added, also, that when an Act on one subject, such as highways, incorporates some of the provisions comprised in another relating to a different subject, such as poor rates, it does not thereby incorporate the modifications of those provisions which are subsequently made in the latter.”¹

Now, this subject of Atidesha immediately leads to the two other principles of Uha and Badha. They are respectively treated in the ninth and tenth books.

Uha Principle (the principle of adaptation.)

The expression Uha Vichāra (discussion on shastric data) occurs very copiously in shastric books. According to the Sāṅkhya Philosophy, the inclination to discuss on the basis of authoritative principles, is treated as one of the functions of the mind. And this perhaps is not very objectionable; for, the habit of thinking freely, or in other words, to indulge in free thinking, is properly distinguishable from the habit of thinking on fixed data. In the world of law, judicial reasoning as distinguished from popular reasoning would correspond to Uha Vichāra. Jaimini uses the word “Uha” for the first time in sutra 52, chapter II, Book I. Where

Scope of the term Uha.

¹ Maxwell, 3rd edition, p. 254.

in answer to the objector's assertion that those passages of the Vedas which are mixed up with matters open to change, cannot represent absolute truths ; he says in effect that, in such cases the adaptation takes place by what is called "Uha." Jaimini chiefly uses the word "Uha" with reference to cases in which when a mantra, used in Prakriti has to be used in a Vikriti, and the name of the Devatâ has to be altered to suit the Vikriti. In modern writings, however, the word Uha has an extended application. It is applied not only to changes of particular words but also to supplying of ellipses which are undoubtedly indicated by the context of a sentence. In short, what is necessarily implied but not expressed is, in modern writings, called Uhya (subject of Uha.)

Jaimini's Book IX discusses Uha in the sense of an adaptation from a model. The Mantra prescribed for use in the Agneya ceremony is Agnaye Yashtum Nirvapâmi. While performing the Sauryya Yaga which is a Vikriti of the Agneya, we must substitute Suryaya for Agnaye and read the Mantra as Suryaya Yashtum Nirvapami. As Uha requires a knowledge of the rules of declension, the author of Mahâbhâshya says that Uha is one of the uses of Vyâkarana. The second Adhikarana of the second chapter determines that the sentences framed by us after the model of Srutis prescribed for the Prakriti are not *Apaurusheya*, because they are made by us.

Savara Swami divides Uha into three classes, relating to the Mantras, to the Sâmaveda hymns and to the consecration of things. Kumârla Bhatta objects to the propriety of the classification. He says "Uha means

reasoning. It is the same, no matter to what objects it is applied—to Mantra or to the hymns or to the consecration.”¹ Then he explains that the object of Uha is to ascertain and adjust the required sacrificial acts (angas) of material limbs.

The above object is introduced by the first Sutra, chapter I, Book IX.

“A sacrificial act is the chief thing, that is based on an injunction—material things consecrated in its connection are employed to promote the sacrificial intention.”²

The above being the case, Uha (the use of sound discretion) becomes necessary to settle the required things and the modes of consecration thereof. In short, Uha (use of sound discretion) comes into play in relation to Arthavâda and Niyama Vidhis, which chiefly relate to the material environments of a spiritual duty. It is not applicable to Vidhis-proper enjoining the spiritual duty itself.

The use of Uha in connection with Arthavâdas, Jaimini expressly points out, in Sutra 52 chapter II, Book I. I have already incidentally explained to you that by the Adhikârana called the Hetuvannigadâdhikaranam, the statement of a reason with reference to a Vidhi, is an Arthavâda. Now this being so, in particular cases of applying the Vidhi, it may be necessary to ignore the reason. In other words, there may be cases in which the reason does not exist yet the Vidhi remains. Dealing with statements of reason in

Uha in relation to Arthavâda and Niyama

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- 1 त्रिविधशीह इत्येतदयुक्तं । कार्यं ? उह नाम वितर्कणं । सा चेन्नरुपा संस्कारेषु क्रियमाणा सेव सा, न तस्याः कश्चिद्विशेषः । Tuptika.
 - 2 यज्जकर्मप्रधानं तद्वि चीदनाभूतं तस्य द्रव्येषु संस्कारानामयुक्तसदृशत्वात् । Jaimini IX, i, 1.

this way, constitutes, among others, a case of Uha (use of sound discretion). The main use of the Uha is with regard to the Niyamas. I have already explained to you that Niyama Vidhis are more or less of a diverse character. In some cases they have the character of imperative Vidhis. In other cases they are only of a directory character. Appya Dikshita in his treatise called "Vidhi-rasayana" says :

"There is a variety of Niyama Vidhis. They are indeed all Niyamas, but it is not possible to bring them all under the definition of "Pākshike sati" being partly transcendental. For instance, in some cases, out of different means to carry out an action, to fix on one of them is a Niyama. In some cases out of different acts arising from the same means, to fix on one such act is a Niyama. In some cases the two are combined."¹

Vedic and
Laukika
Niyama.

In the Vedic Vidhis, as a rule, there is a greater stiffness and inflexibility than in the Laukika (worldly) Vidhis. The reason of this is clear. In the Vedic Vidhis the Apurva sanction makes even a Niyama almost imperative. The Niyama text of the Vedas are only subject to modification by Uha in small particulars, such as regards the name of the Devatā, or the number and gender of words. But a Laukika Niyama is mainly directory. In the Smṛiti literature, however, a Niyama creating a substantive right is an imperative-restrictive rule. Thus when Jimutavahana speaks of Niyama in paragraph 27, chapter I (Colebrook's translation), he uses the word not in the sense of a directory rule but as an

१. इति: कुत्रापि कार्ये कश्चन तदुभयं कुत्र चिद्विधुपातना विज्ञाप्यते नियम-
कचिदुभयविधं पाश्चात्तयेन दृष्टं । तस्मैव प्रत्यगीकृतं कचिदपि कुडचित्पाश्चात्त-
येन दृष्टं नानादृशं तदित्यं नियमविधिनतं दुर्यहं कश्चन । विधिरसायने ।

imperative-restrictive rule. But when a Niyama only regulates the manner of doing a duty, or the manner of expressing a right, it is more or less of a directory nature. For instance, there are the rules that one should marry his daughter before she arrives at such and such age ; that in adopting a son one should adopt a boy of such and such age. These rules have been held by the Hindu authorities only to be of a directory character. Uha has a full play as regards the application of the rules of the above nature. By Uha-Vichara such rules are relaxed in cases when the relaxation becomes necessary.

Application
of Uha to
marriage a
adoption.

I have already told you that the Uha-Vichara is out of place as regards imperative Vidhis. It is only applicable as regards rules more or less of a directory character. Take for instance the following example. That one must observe the Ekadashi fasting, is an imperative Vidhi with reference to certain classes of persons. But the rule that one should break his fast in a certain manner on the next day is a Niyama. By Uha you cannot relax the former rule, but you may relax the latter. Looking to the modern western works on interpretation, what is called therein, "construction most agreeable to justice and reason" would correspond to the Uha-Vichara of the sanskrit writers. Maxwell says, "In determining either what was the general object of the Legislature, or the meaning of its language in any particular passage, it is obvious that the intention which appears to be most agreeable to convenience, reason, justice, and legal principles, should, in all cases open to doubt, be presumed to be the true one. An argument drawn from an inconvenience, it has been said, is forcible

Uha-Vichara
corresponds
to modern
construction
most agree-
able to
justice and
reason.

in law; and no less force is due to any drawn from an absurdity or injustice."¹ Again he observes :

"A sense of the possible injustice of an interpretation ought not to induce Judges to do violence to well-settled rules of construction, but it may properly lead to the selection of one rather than the other of two possible interpretations. Whenever the language of the Legislature admits of two constructions, and if construed in one way would lead to obvious injustice, the Courts act upon the view that such a result could not have been intended, unless the intention had been manifested in express words."²

In short, it is a fixed principle that an equitable and reasonable construction should be resorted to in all cases when it is possible. The term *Uha* is not used by Jaimini in the extended sense of such equitable and reasonable construction. The immediate subject of his construction was the Vedic Revealed Law. So it was not permitted to him to sanction principles of equitable and reasonable construction except within very narrow limits.

But the Smriti law, though it is also constructively a revealed law, is not on the same footing with the Vedic Revealed Law. It deals with *Laukika* (worldly) affairs. It has often to adjust itself to new social wants and growing usage. Hence the Smriti writers broadly assert almost in the same strain as Maxwell that, "Decision should not be based only on the Shastras. By an unreasonable judgment there is loss of Dharma." (Vrihaspati.) No doubt the Smriti writers will not allow equitable and reasonable considerations to override the

¹ Maxwell, 3rd edition p. 264.

² Maxwell, 3rd edition p. 277.

clear text of law. So they say "Smṛiti is of greater authority than Artha Shastra." (Yajñavalkya). "When the rules of sacred law and of Artha Shastra are at variance, he must discard the latter and follow the former." (Nārada). But it is insisted on that, "Avoiding carefully the violation of either the sacred law or Artha Shastra he should conduct the trial attentively and skilfully." (Nārada).

Thus in the above Smṛiti text the principle of Uha-Vichara is taken as co-extensive with what we call in modern times equity and good conscience. It is clear that the expression 'Artha Shastra' in the above text means equitable principles or common sense principles; although in a narrower sense the word means relief, which is the subject of a litigation. From that narrow sense, it naturally passes into the sense of equitable relief, and thence into the general idea of equitable or common sense principles.

Artha
Shastra

Certainly the expression 'Artha Shastra' here does not mean the science of political economy. According to Amarakośha, it imports the rules of morality and prudence such as are inculcated by Chanakya Pandita. Amarakośha also gives the principles of inflicting punishment as the meaning of this expression. But in books of Vyavahara law it clearly means the relief sought for in a litigation, which meaning is allied to the second meaning as given in Amarakośha; and it is practically the same as considerations of equity.¹

Badha principle (the principle of bar).

The principle of Bādha and Avāpa are discussed by Jaimini in the tenth chapter of his work. Bādha

1 अर्थशास्त्र शास्त्रादि प्रणीतं नैतिशास्त्रं तत्पर्यायः । दण्डनैतिः । इत्यमरः ।

Badha, as
used by
Jaimini.

Badha, with
regard to
positive
texts.

primarily means barring a thing owing to inconsistency. Jaimini uses the principle of Bādha mainly with reference to cases where Angas or sub-ceremonies are to be introduced from the Prakriti (standard Yāga) into a Vikriti (moulded Yāga); the injunctions as to the details of which are not complete. In such a case, though the Angas or the sub-ceremonies are to be borrowed from the standard Yāga, those of the sub-ceremonies which prove themselves to be inconsistent with or out of place in the Vikriti Yāga, are to be omitted. As for example, in the Rājsuya Yāga, certain Homas are prescribed, for the proper performance of which one must borrow details from the Darsapaurnamasi Yāga. In the Rajsuya Yāga, plain ground is directed to be selected as the Vedi for the Homas, while in the case of the Darsapaurnamāsi, the Vedi should be erected by digging with spade &c. Such an act would be out of place in constructing the Vedi for the Homas in the Rajsuya Yāga. Here, there is a Bādha (bar) of the particular rule regarding the erection of the Vedi in the Darsapaurnamāsi Yāga, being extended to the Rājsuya Yaga. This is the case of Bādha by reason of express text. There are other instances in which the inconsistency arises incidentally. For example, in the Sadyaska there is no need of cutting the peg with which the animal is to be tied. But, in the Agni-Somiya Yāga which is the Prakriti of the Sadyaska Yāga, reciting of certain Mantras is prescribed in connection with the cutting of the peg. This recital being out of place in the former Yāga is barred in carrying the Atidesha process. Numerous other illustrations can be given. As for example, in the Satra

Yaga the selection of Rittik is out of place and so omitted, though this is done in the Soma Yaga of which the Satra is the Vikriti. The Krishnala Nyaya (black bean maxim) is another instance. In cases where Atidesha is to be made by implication, it is altogether barred, if there is an express text against making the implication.

When there is a negative ordinance prohibiting a thing, it is to prevail notwithstanding that there is an Atidesha which by implication enjoins the thing. For instance, there is a rule that all sacrifices partake of the character of Darsa and Purnamasi Yâgas. The result is that all the rules of Darsa and Purnamasi Yâgas are applicable to the Pasu Yâga also. But there is a text which says that the Aghara and the Ajyabhaga Homas need not be made in the Pasu Yâga. Therefore, these Homas need not be made in the Pasu Yâga, though in the absence of the prohibitory text they would have to be made on account of the rule which lays down that all Yâgas must partake of the character of Darsha and Purnamasi. The importance of the principle under consideration will appear in connection with the position, rights and duties of adopted sons who are, by a general rule, declared to be an efficient substitute for an Aurasa son, but whose rights and capacities in some measure vary by some special texts from those of an Aurasa son.

Badha, with regard to negative texts.

Sree Bhatta Sankara gives numerous cases of Bâdha in his work called Mimansa Valaprakasha. Having defined Bâdha to be exclusion by reason of repugnancy, he refers to the two-fold division of Prâpta-Bâdha and Aprâpta-Bâdha. He defines Prâpta-Bâdha as follows :—

Sree Bhatt's two fold division of it

Prâpta-Bâdha occurs where from Atidesha (reference) of general Shastra and the like, a knowledge is

Prapta-Badha.

engendered to the effect that a thing is inappropriate in all matters.¹ It means a Bādha (exclusion by repugnancy) of a matter which must be taken as worthless because of some rule or principle of the ordinary Shastra pointing, among other things, to its worthlessness. The following are some instances of it out of many given by him.

Illustrations.

If there be two casual Vidhi texts one preceding the other and clashing with one another, the one that precedes is barred by the one that follows²; as in the case of the Apachheda maxim. That which is needed bars what is not needed.³ That which slightly occurs is barred by that which amply occurs.⁴ That which is opportune bars that which is not opportune.⁵ That which is in the nature of a part is barred by what is in the nature of the whole.⁶ That which serves a practical purpose, bars those which are of an ethical purpose, universal or casual.⁷ That which is directly taught bars that which is obtainable by reference.⁸

Aprapta-
Badha.

The second class of Bādha is called Aprāpta Bādha. It is defined to be a Badha in which the sense of inappropriateness of a particular text or of a parti-

१ यत्रातिदेशः सामान्यशास्त्रादि जनिते स्थाने सर्वविषये वा निषेधमिति प्रत्ययान्वरं भवति स प्राप्तबाधः । Mimansa Valaprakasha p. 131.

Mukunda Shastri's edition.

२ पूर्वं परेष ।	Do.	Do.
३ निष्प्रयोजनं सप्रयोजनेन बाध्यते ।	Do.	p. 132.
४ अल्पं भूयसा ।	Do.	Do.
५ साधकार्यं निरवकाशेन ।	Do.	Do.
६ अङ्गं प्रधानेन ।	Do.	Do.
७ साधनेन निवृत्त्य नैमित्तिकस्य ।	Do.	p. 133.
८ अतिदेशिकेनोपदेशिकस्य ।	Do.	Do.

cular proposition arises from its comparison with another particular text or proposition weightier than itself.¹ From the many instances of this given by Sri Bhatta Sankara I place before you the following :—

A Sruti of a doubtful character is barred by a Sruti which is free from doubt.² A Linga which is more cogent bars that which is less cogent.³ Similarly a Sruti bars a Smriti.⁴ A Sruti bars Achara also.⁵ An absolute Smriti without reference to any popular reason bars one that is based upon a popular reason.⁶ An approved Achara bars an unapproved Achara.⁷ An unobjectionable Achara bars an objectionable Achara.⁸ A Smriti of the character of a Vidhi bars one of the character of an Arthavada.⁹ A Smriti of a doubtful character is barred by one free from doubts.¹⁰ That which serves a purpose immediately bars that which is of a remote service.¹¹ That which is multifarious in meaning is barred by that which has a single meaning.¹²

Illustrations.

1 यत्र तु लिङ्गादौ श्रुति कल्पना प्रतिबन्धात् ज्ञानोत्पत्तिरिव प्रतिबाध्यतेऽसाव-
प्राप्तबाध इति । Mimāṃsā Vālaprakāśha p. 131.

- | | | |
|--|-----|---------|
| 2 असन्दिग्धश्रुतिबाधः । | Do. | p. 135. |
| 3 लिङ्गं नापि लिङ्गं बाध्यते । | Do. | Do. |
| 4 श्रुत्या स्मृतिर्बाध्यते । | Do. | p. 138. |
| 5 श्रुत्या आचार बाध्यते । | Do. | Do. |
| 6 अदृष्टार्थकृत्या दृष्टार्था स्मृतिर्बाध्यते । | Do. | p. 139. |
| 7 आप्ताचारिणामाप्ताचारो बाध्यते । | Do. | Do. |
| 8 अविगीताचारिणो विगीताचारो बाध्यते । | Do. | Do. |
| 9 विधिप्रसवया कृत्या अर्थवाद प्रसवा सा बाध्यते । | Do. | p. 140. |
| 10 सन्दिग्धमसन्दिग्धेन । | Do. | Do. |
| 11 आरादुपकारित्वं सन्निपातित्वेन । | Do. | Do. |
| 12 अनेकार्थत्वेनेकार्थत्वेन बाध्यते । | Do. | Do. |

The application of a general clause is barred by the presence of a clause in the nature of *res gestae*.¹ A rule of procedure is barred by a mandatory rule.² A manifest sense bars a sense by context.³ A primary sense bars a secondary sense.⁴ That which has a single indication is preferable to what has many indications.⁵ An indication of an inherent nature bars one which is not so.⁶ That which indicates an action is to be preferred to what merely indicates a capacity.⁷ If you can fill up an ellipsis by an expression which occurs in a passage, you cannot go beyond it.⁸ A Niyama Vidhi bars an Apurva Vidhi.⁹ This rule of bar is a little striking. An Apurva Vidhi is the highest Vedic Vidhi and a Niyama Vidhi is only a Vidhi of a subordinate character. How can the latter bar the former ? The answer is that the rule is enunciated from the Smṛiti point of view. In the Smṛiti law the *drishṭa* (objects of sense) are of greater importance than *adrishṭa* (supersensuous matter). Therefore a Vidhi of transcendental sanction has to yield to one of worldly sanction.

From the above rules of Bādha you will see that the application of the principle Bādha, is one of the

1 अनाराखाधीतं प्राकरचिह्नं बाध्यते ।	Mimāṃsā Vālaprakāśha.	p. 141.
2 प्रयोगवचनाश्रयं श्रौतकाश्रयेन बाध्यते ।	Do.	Do.
3 श्रुत्या लक्षणा बाध्यते ।	Do.	Do.
4 लक्षणायापि श्रौतौ बाध्यते ।	Do.	Do.
5 एक लक्षणाया अनेकलक्षणा बाध्यते ।	Do.	p. 143.
6 निबद्ध लक्षणाया अनिबद्धलक्षणा ।	Do.	Do.
7 लक्षणायोरपि श्राव्यलक्षणाया धर्मलक्षणा बाध्यते ।	Do.	Do.
8 अनुवक्त्रे बाध्याहारौ बाध्यते ।	Do.	p. 144.
9 नियमविधिना अपूर्णविधिर्बाध्यते ।	Do.	p. 143.

means of adjusting conflicting texts or conflicting considerations. When two texts which are apparently conflicting are capable of being reconciled, they must be so reconciled. This is an axiom. Again where two texts are in direct conflict and they are incapable of reconciliation, both of them lose their force, and one is at liberty to accept one or the other text at his option. This is also an axiomatic principle. But there is a third consideration in which of two conflicting texts or conflicting considerations one is to override the other. This is called Bâdha. It means that when one of two conflicting things has a presumption in its favour, it bars the other which can claim no such presumption.

Reconciliation of conflicting texts by Bâdha.

The distinctions between the three ways of dealing with conflicts are very fully discussed by Savara Swami in his commentary on Sutra 14, Chapter III, Book III. There he shows that where two contradictory texts or contradictory matters are both of equal force, there only is contradiction proper (Virodha). But if one of them possesses greater force than the other, then the former supersedes the latter, and this is called Bâdha. As regards cases in which there is only a seeming contradiction, but in reality the grounds covered by the texts are different and are compatible with each other, there is neither Virodha nor Bâdha. All the several topics will have to be fully considered in connection with the maxims touching negative Vidhis.

Savara Swami's dealing with conflicting texts.

As regards the Smṛiti texts, when the texts of one Smṛiti writer vary from those of another, there is no presumption in favour of those of one writer in preference to those of another, so as to entitle the texts of one to supersede those of another. In other words, one

Reconciliation of Smṛiti texts.

Smṛiti text cannot create a Bādha of another. In fact two varying Smṛiti texts are rarely in direct contradiction to each other. Besides, as all Smṛiti texts on a given subject are supposed to be derived from and to conform to some one and the same missing Śruti text, a direct contradiction between one Smṛiti text and another cannot be assumed. Therefore the principle of option cannot apply to apparent contradictions between one Smṛiti and another. The result is that the digest writers are bound to reconcile the varying Smṛiti texts somehow or other.

Tantrata
and
Prasanga.

There are two other principles to each of which Jaimini devotes an entire book, which also relate to the application of Vidhi texts. These are Tantrata and Prasanga. The etymological meaning of Tantrata is extension. It involves the principle of avoiding repetition of acts when a single act would serve the purpose. Prasanga denotes incidental. It imports the principle that the performance of the major duty dispenses with the performance of minor duties which are involved in it. As, when an offering presented for the principal Yagakarman is made, it incidentally serves the purpose of subordinate Yagas in which the same offering is to be made. When a repetition of the same act is prescribed with reference to more than one thing, to dispense with the repetition is Tantrata. Avapa is the reverse of Tantrata. It is the repetition of a thing many times to make it useful to many people. In fact, where repetition is necessary to serve a purpose, it is Avapa; as in the case of Avaghata of Vrihi or the husking of grains, which must be repeated until all the husks are completely removed. The following is an instance of Tantrata.

Avapa.

When a man has failed to do several duties at their proper time, and the same penance is prescribed for the delay in each case, the penance need not be repeated, but once done absolves the man from the fault. There are many Smṛiti texts on this point ; as for instance, those in Dakṣha, Viṣṇu and Prayaschittatattva. The figure of speech from which the Tantra Nyaya is taken is interesting. It is taken from the process of the weaver who, by pushing up the woof, touches all the warps. Prasanga is the incidental effect of an act of which the chief purpose is different. Thus where the texts require that nothing should be used in a Yajna which has not been consecrated by Mantra. Suppose a whole animal has been consecrated, its flesh for preparation of cakes need not be separately consecrated.

The principle of these two rules is generalised and shortly put by modern writers as follows :—

“An act enjoined by the Śāstras need not be performed more than once.” This principle may perhaps go some way in supporting the decision of their Lordships of the Privy Council to the effect that if a widow, having a permission of her husband, once adopts a boy, and the boy dies leaving a widow, who is according to Śāstras half his body, the widow of the adopter can not make a second adoption, although the permission from her husband may have contained a provision to this effect. This principle has no bearing, however, to the case of a simultaneous adoption which has been held to be invalid, although Dr Siromoni says that the principle applies to such a case.

In concluding this lecture I should tell you that the subject of *application* of texts and that of *interpre-*

१ सकृन् कृते कृतः शास्त्रार्थः ।

Udvahatattva.

tation of texts overlap each other in many respects. I have tried to present them distinctly, the one in lecture II, and the other in this lecture, so far as it is possible to treat them distinctly.

The topics of Atidesha, Uha, Badha, Tantrata and Prasanga are all allied topics. I have shown to you that Atidesha is divided into two broad classes, general and particular (Samanya and Vishesha). Uha is also divided into two classes relating to verbal considerations and relating to application of logical principles. Badha is also divided into two classes general (Prapta) and particular (Aprapta). These distinctions may not be of much practical importance but it is necessary to keep them in mind in order to follow the Sanskrit authors.

LECTURE IV.

MIMANSA RULES SPECIALLY REGARDING THE SMRITIS AND USAGES.

Section I. A succinct idea of the topic.

In western legal literature we have the Statute Law and the Common Law. In the Hindu Law literature what corresponds to these is the Sruti and the Smriti. The Statute Law is in set language and is in itself authoritative. So is the Sruti Law. The Common Law or the Customary Law may or may not at all be in writing ; at any event it is not in the shape of set language. It is also not in itself absolutely authoritative, as its authoritative character depends on certain conditions. The Smriti Law which is associated with the Customary Law of the Hindus are much of the same character. The principle of construction hitherto discussed *viz.*, the axioms, the general principles, Sruti, Linga &c., are mostly based upon considerations of the characteristics and properties of language. They chiefly bear on the construction of the Vedic Law and correspond to the rules of interpretation of statutes. But as there are additional principles of construing the Common Law and the Customary Law in European Law literature, so additional rules have been framed by Jaimini for construing the Smriti Law and *Prayoga* or Usage Law.

Sruti and
Smriti Law.

In these days the Common Law is virtually identical with the Case-Law as Sir Henry Maine puts it. As regards the interpretation of the Statute Law there are

Case law
and statute
law.

the principles of literal construction, construction by context, special rules of construction &c. In interpreting Case-Law, however, there are other rules to be observed. First of all, a decision or ruling of the Court is to be so construed as to make it agree with the provisions of the Statute on the subject. Secondly, if a ruling or decision is at variance with the Statute, it must be disregarded. Then, in the third place, a ruling or decision is to be held good only so far as the actual question raised in the case required it. In the case of the Statute Law the question is what the Legislature intended. But as regards the interpretation of Case-Law the question is not so much what the Judge intended, but how far his solution was required by the facts of the case. Again, as regards customs and usages, there are the conditions of antiquity, certainty and reasonableness.

You will see that the special rules of interpretation laid down by Jaimini regarding the Smriti or Customary Law more or less partake of the character of the above rules. But you should not forget that since the time of Jaimini, many Smriti texts, and even the texts of certain digest writers have almost stepped into the position of the Vedic Law in point of authority and are to be interpreted by the principles of interpreting the Vedas (the Divine Statute Law). Yet there are some which can claim no greater attention than the Customary Law as it has been treated by Jaimini. Jaimini treats the Smriti and Usage on one and the same basis. The principles to deal with questions of Usage are of the greatest practical importance. Therefore the principles laid down by Jaimini in the third chapter of the first book are of great value.

Jaimini's
treatment of
Smriti and
Usage law.

In the Introductory lecture I have given a short summary of these principles. I propose to deal with them in detail in this lecture. But at the outset I should make certain observations as to the shape in which the Sutras, aphorisms on the subject, appear compared with the manner in which the successive commentators have accepted them. From a perusal of the Sutras it appears that when they were framed, the Customary Law of the Indo-Aryans was of a homogeneous character. Little or no foreign practice had made its way into it at that time. For, the Sutras make no allusion to any question regarding anything foreign. They contemplate only practices handed down or supposed to be handed down from the purely Vedic age as well as those sanctioned or not disapproved by the *shishtas* (Aryans of light and learning).

Savara Swami, the great commentator, however, reads some of the Sutras as exclusively relating to the Mlechha language and Mlechha usages. Take for instance the following Sutra :

Sutras relating to Mlechha language and usages.

“The matter incidentally authorized holds good, in the absence of any indication to the contrary.”¹

In this Sutra there is nothing to show that it is directed, far less that it is solely directed, to sanction the acceptance of foreign words or foreign practices according to the import attached to them by foreigners. Yet Savara Swami reads the Sutra in this sense. He uses the word Mlechha to indicate a foreign character. This word did not refer to the heterodox Buddhists, but probably to the Greeks or the Sythians. The illustrations given by him show this. So there can not be any doubt

१. चोदितम् प्रतीयताविरोधान् प्रमाद्विन ।

Jaimini. I. iii 10.

that Savara Swami lived long before the advent of the great prophet Budhha Deva.

Different
construction
of Padartha-
prabalya
maxim by
Kumarila
and Savara.

Let us now take Kumarila Bhatta. He came long after Savara Swami ; for he comments on Savara Swami as a work which had almost become unintelligible in his time. Kumarila attaches to Bauddha practices and Bauddha doctrines in a spirit of earnest opposition. For, with reference to the Sutras regarding the valid force of usage, he introduces the question whether even a sound and valid teaching of the Bauddha savants could be accepted as a basis of valid usage, and decides that it could not be so accepted. Kumarila Bhatta, however, puts a more definite construction upon the three Sutras which constitute what is called the Padartha-prabalya maxim than that put upon it by Savara Swami. Savara Swami takes the maxim as simply laying down that when there is a Vedic text indicating that a certain action, say action A, should be followed by another action B ; if a practice should have arisen to interpose between A and B, a third action C, this third action can not be discarded. That the action or practice is a substantive duty (padartha) and is valid notwithstanding that it breaks the order enjoined by the Vedas. This surely is too narrow a view of the broad words of the Sutra *Api va karana agrahane prayuktani pratiyeran*—"No one usage prevails if it does not admit of any (perverse) motive."

Kumarila Bhatta takes the above Sutra independently of the two preceding Sutras and construes it differently from Savara Swami. This is explained by Rameshwar Suri in his Subodhini Vritti. I shall deal with this hereafter. For the present, I think, you sufficiently understand how the principles, enunciated

by Jaimini as regards the construction of the Smṛiti and Usage law, are to be studied beginning with the Sūtras themselves, and then step by step following his successive commentators. The chief among these principles are the following as already mentioned before :

1. The Smṛiti is presumed to be authoritative and binding (Smṛiti-pramanyâdhikarana).

2. In the event of conflict between Śruti and Smṛiti the latter fails (Śruti-prabalyâdhikarana).

3. A Smṛiti text, the origin of which can be traced to perverse motives, is not binding (Dushtamulaka Smṛiti-apramanyâdhikarana).

4. An usage has the force of law if not originated in any perverse motive (Padārtha-prabalyâdhikarana).

5. Between two conflicting usages (either as regards the application of words or in matters of conduct) that which is conformable to the Śāstra is to prevail.

6. An authorised matter expressed in foreign words must be understood in the sense that those words carry with the foreigners (Mlechha-prasiddha-padārthâdhikarana).

7. An usage or Smṛiti must be reduced to the short, simple and general form of a Vedic Vidhi (Sāmānya-Śruti-kalpanâdhikarana).

The first principle which is the first Adhikarana of the chapter follows from the following two Sūtras.

The objection :

“Duty arises from the Vedic commands, all outside the Vedas must be disregarded.”¹

Seven principles of construction of Smṛiti and Usage law.

Sūtras relating to the first principle.

1 धर्मस्य शब्दमूलवात् अशब्दमनपेक्षं स्यात् ।

Jaimini I. iii. 1.

The answer :

"The authoritativeness of the Smṛiti law is a matter of inference, because the promulgators of it are the same as those of the Vedas."¹

Sutra relating to the second principle.

The second principle is contained in the third Sūtra of the chapter and forms the second Adhikarāṇa of it.

"A Smṛiti is, however, to be disregarded in case of conflict ; the presumption in its favour arising in the absence (of conflict.)"²

The third principle is worked out by commentators from the fourth Sūtra of the chapter and is the third Adhikarāṇa of it. The Sūtra runs as follows :

Sutra relating to the third principle.

"(A Smṛiti is to be disregarded) also when an (improper) reason is seen."³ All the commentators agree in taking *hetu* (reason) to mean a *dushta hetu* (an improper reason).

The fourth principle is embodied according to some commentators in Sūtras 5, 6 and 7. But according to Kumārila Bhaṭṭa Sūtras 5 and 6 form a separate Adhikarāṇa (topic). He maintains that Sūtra 7 alone embodies the principle stated under the fourth head. This Sūtra 7 is as follows :

Sutras relating to the fourth principle.

"But usages not admitting of the (vitiating) cause (*viz.*, perverse motive) prevail."⁴

Kumārila Bhaṭṭa's views will be fully stated later on.

The fifth principle, regarding conflicting usages is

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|--|--------------------|
| 1 अपिवा कर्त्तुं सामान्यात् प्रमाणमनुमानं स्यात् । | Jaimini I. iii. 2. |
| 2 विरोधेऽनपेक्षं सादृश्यादनुमानम् । | Jaimini I. iii. 3. |
| 3 हेतुदर्शनाच्च । | Jaimini I. iii. 4. |
| 4 अपिवा कारणानुसङ्गे प्रयुक्तानि प्रतीयेरन् । | Jaimini I. iii. 7. |

properly the subject of Sutras 8 and 9 and forms the fifth Adhikarana of the chapter.

Objection :

"In them (usages) no marks of contradiction (to Sruti) being visible, they would be of equal force and capable of conflict (with each other)."¹

Sutras relating to the fifth principle.

Answer :

"(Then such as are found) in the Shastra as are auxiliary to it must prevail."²

The sixth principle forming the sixth Adhikarana is deduced from Sutra 10 of the chapter which has already been stated. It runs as follows :

"Matters incidentally authorized hold good in the absence of any indication to the contrary."³

Sutras relating to the sixth principle.

Commentators take it as referring to foreign words and foreign usages, apparently because, otherwise the Sutra would be useless. For, matters incidentally authorised, if not of an exceptional character, must hold good even without such a Sutra.

The seventh principle which is the subject of the eighth Adhikarana is introduced by the 15th Sutra affirmed as Sutra 16 and is discussed at length by Sutras 17 to 23.

Sutras 15 and 16 are as follows :

Objection :

"As an inference is to be made, then all that has to be done is to join the inference to make anything authoritative."⁴

Sutras relating to the seventh principle.

1 तेष्वदर्शनाद्विरोधस्य समाधिर्नतिपत्तिर्यात् ।

Jaimini I. iii. 8.

2 शास्त्रस्यावा तन्निमित्तत्वात् ।

Jaimini I. iii. 9.

3 बोधितत्त्वप्रतीयेत।विरोधात् प्रमाणम् ।

Jaimini I. iii. 10.

4 अनुमान व्यवस्थानात्तत्त्वयुक्तं प्रमाणं स्यात् ।

Jaimini I. iii. 15.

Answer :

“But a duty must be general and the following of that characteristic (of being general), is fit for the rule of law (to be formulated).”¹

The other Sutras bearing on the topic will be discussed hereafter.

Having given you a rough indication of the Sutras in which the seven rules affecting the interpretation of Smritis and Usages are contained, I should in a similar rough manner show you how these rules correspond with our modern legal ideas.

Correspondence of the seven rules with modern legal ideas.

The Smriti-pramānya maxim corresponds to the idea that a rule of common law is taken to be authoritative on the presumption that it must have been recognized by those who had legislative authority. The Sutra-prabalya maxim corresponds to the principle that if a decision or dictum is contrary to the express law of a statutory nature, the latter overrides the former. The Dushtamulaka-Smriti-apramanya-adhikarana corresponds to the rule that an usage or custom must be reasonable in order to be accepted as law. The Padartha-prabalya-adhikarana tallies with the maxim “usage is the text interpreter”. The Shastra-prasiddha-padartha-adhikarana and the Mlechha-prasiddha-adhikarana are no doubt of a special character. But they are reasonable and proper. The Smriti-samanya-adhikarana virtually corresponds to the principle that an usage is valid in so far as it is clear and certain.

1 अपि वा सर्वधर्मः स्थातुं तज्जायता हि धर्मः । Jaimini I. iii. 16.

Section II. Detailed consideration of the seven rules.

Rule I.—*The Smṛiti presumed to be authoritative and binding.*

The reason given by the Sūtra is 'because the promulgators of the Smṛiti are the same as those of the Śruti.' This reason, you see, is not quite the usually supposed reason *viz.*, that every Smṛiti text is only a reproduction of some lost Śruti text. Be that as it may, a Smṛiti text is supposed in either case to have its origin in Vedic principles. This principle of making civil law dependent upon the religious law is not peculiar to the Hindus. It is the common feature of the law of all ancient communities and also of some modern communities. The governing power in the infancy of a society rested usually with the priests and the people, and not in any monarchical institution. The people were naturally guided by their elders, and between the elders of the people and the priest there was little difference. In fact, sometimes the elders of the people were the priests. The word priest, as a corruption of presbyter, is identical with the elder, presbyter meaning the elder. The elders, combining in their priestly functions, were called patriarchs. This was the case, for instance, with the ancient nations. As regards the Indo-Aryans (the Hindus) the same thing is clearly exhibited by the Rīg Veda. The Vedic Rishis were in most cases Prajapatis or patriarchs. The institutes of Hindu law now current, although they may be comparatively modern productions, are many of them traced to the memory of the ancient Vedic patriarchs, Manu, Atri, Angiras etc. Hence it is that

Vedic
origin of
Smṛiti.

Rīg Veda.

Jaimini declares that the authoritativeness of these institutes are matters of inference, because they were promulgated by the Rishis of the Vedas.

Law and religion blended together.

The above is clearly exhibited by the Vedas, specially the Rig Veda. The highest aspirations and the highest ideals of a nation are embodied in its religion. Therefore a rule of conduct which is associated with religion and has the sanction of it, more effectively sways the conscience of individuals in the shape of positive law, than it otherwise would do. As Rishi Jaimini understands the Vedas, the pith and marrow of them is the command requiring man to seek heavenly bliss and heavenly purity. To have the Vedas as representing this command at the top of the civil law is a great benefit to such law. Sir Henry Maine would make it out that civil law has nothing to do with what is regarded as natural ideas of justice, but that it is a matter of evolution from what occurred in past times. On the other hand, the philosophers of the French Revolution sought to wipe off the past and to start social institutions on the basis of what they called natural reasons and natural justice. They took it that the human mind cut off from the past traditions of religion and morality was not a loser, but its natural instincts of reason and justice were at every moment ready to make man what he ought to be. Thus according to them law and justice were but the product of the moment and did not depend upon the past. Sir Henry Maine protests against this view. He maintains that a full blown system of law and justice cannot be brought into existence all at once. He makes it out that our

Sir Henry Maine and the philosophers of the French Revolution on civil law.

present systems of law and justice are, and must be, the outgrowth of ages of gradual development. It appears, however, that if one of these two theories mean that, the present is independent of the past, and the other that, the past events of the legal history of a nation alone form its present jurisprudence, without the help of anything like the instincts of justice and reason, then both these theories would be imperfect. The truth, perhaps, lies between the two extremes. Although in early stages of society religion is mixed up with civil law, there is a gradual tendency of the civil law being disintegrated from the religious law. And this is shown clearly by the history of the Hindu law. When Jaimini wrote or pronounced the Aphorisms, there had been partial disintegration to some extent, but the civil law was yet dependent on the religious law in a great measure. Later on, when the Nibandhas (the digests) were written, such as the Mitakshara and the Dayabhaga, the disintegration had been almost complete. But up to the present time it is not fully complete, nor is it desirable that it should be so. For the reverence to the Vedic command 'Thou shall aspire for a heavenly life,' however weak or theoretical it may have become, is sure to have some influence in the proper development of the Hindu law.

Rule. 2.—*In case of conflict between a Smriti text and a Vedic text, the latter should prevail.*

This rule, generally speaking, is of little practical importance. For, there is very little of practical civil law in the Vedas. Hence the texts of the Smritis which contain such law have hardly any chance of colliding with the Vedic texts. But as regards that portion of

Oudambari
Nyaya—an
illustration of
conflict.

the Smritis which deal with Achâra (rules of individual conduct and religious ceremonies), there are chances of collision. An example of this is afforded by what is called Oudambari Nyâya, which deals with a conflict between a text of Kâtyayana Smriti and a Vedic text. In matters of positive civil law also conflict is sometimes discovered between the Veda and the Smriti. For instance, more than one Smriti text declares that in cases of partition among the brothers the elder brother is to get a larger share than the younger. In the Vedas, however, there is a passage that Manu divided his property among his sons in equal shares. The digest writers naturally were bound to give great weight to this text. In fact, the influence of the Vedic text has eventually prevailed over the Smriti texts, and over the compromise even that some of the digest writers suggested. The result is, that in the law as it now stands, all brothers get equal shares of their paternal property.

Conflict
between
Smriti and
Puranas.

In connection with this topic, I may tell you a few words regarding the question of conflict between the Smriti and the Purânas. This question is not touched by the Mimânsâ aphorisms. In fact, the Puranas have not been at all noticed in the Aphorisms. Some of the Smriti writers, however, reckon the Purânas as one of the factors of civil law. For instance, Vyasa says, "Where there is a conflict between the Sruti, the Smriti and the Purânas, the Sruti must prevail ; but in a conflict between the latter two, the Smriti must prevail."¹ Writers

1 श्रुतिस्मृतिपुराणानां विरोधो यत्र दृश्यते ।

तत्र श्रुतं प्रजायते हि तद्यदि चेद्भ्रमः तर्हि ॥

Vyasa.

of note such as Raghunandana does not hesitate to cite passages from the Pauranic works, such as the Aditya Purana. The true position of the Puranas in the positive law, is made out by the next general Mimânsâ rule according to which usage has the force of law. Purânas are ancient records of certain usages, and as such they are fit to be consulted, whenever a question as to such usages occur. Again sometimes, some Purânas reproduce Smṛiti texts, and in so far as a Purâna contains such reproduction, it may be regarded as a different reading of some particular Smṛiti to which it corresponds. Thus the following observations by Professor Wilson seems to be correct enough :

“The Purânas are not authorities in law, they may be received in explanation or illustration, but not in proof.”¹

Anyhow the position laid down by Vyâsa that, in conflict between the Smṛiti and the Purânas, the former prevails, is unquestionable. But this must be subject to the rule regarding the superiority of usages and customs contained in the Purânas.

Rule. 3.—*The authority of the Smṛiti is vitiated if it is based on a perverse motive.*

The Sutra, as has been shown before, does not contain any word like perverse. It is simply “also to be disregarded if a motive is seen.” This, indeed, would be a very wide proposition if it meant that wherever the statement of a reason was found in a Smṛiti text, that text would not be regarded as a Vidhi. Such a wide view of the Sutra is taken by V. N.

Sutra speaks
of motive
only.

Mandlik's
wide-view of
it.

1 अतर्वेदे विरोधे तु परित्याग यथा भवेत् ।
तथैव बौद्धिकं वाक्यं अतिवर्धे परित्यजेत् ॥

Mandlik. With regard to the text of Vashishtha : "But no one should give or receive an only son, for he saves the man (from *put* or hell)"—Mandlik says, "This text on the most approved principles of criticism must also be treated as a recommendatory one, inasmuch as it contains a precept that is intended for a certain specified purpose. It is a rule of the Purva Mimânsâ that all texts supported by the assigning of a reason are to be deemed not as Vidhi but simply as Arthavâda, it follows that it has no obligatory force whatever." Mandlik goes on :

"Savara Swami constructs an Adhikarana (a topic) on this head, which he calls Hetubannigadadhikarana (a topic in regard to texts which contain a clause containing the reason of the precept) out of five Sutras of Jaimini, Ch. I, quarter II, 26-30." He further says :

"This principle is made still clearer by Savara Swami in his comments on Jaimini's Sutra 4 of Ch. I, quarter III."¹

In the case of Beni Prasad *vs.* Hardai Bibi, S.A No. 35 of 1888, the above mentioned Adhikarana was referred to in arguments before the Chief Justice Sir John Edge and the three judges of the Allahabad High Court in the broad view of this Sutra taken by Mandlik. But if one looks to the commentary of Savara and the whole host of commentators following him, one is bound to conclude that the Sutra should be construed as laying down the comparatively narrower rule that when some selfish design is found to underlie a Sruti text then its authority is to be ignored.

Savara and commentators do not take such wide view.

¹ Mandlik's Hindu Law p. 499.

All the Commentators beginning from Savara agree that the Sutra in question has in view the Smṛiti text relating to *Visarjana-homa*. The meaning of the text is, that a priest called Adhvaryu takes a piece of cloth connected with a sacrifice called *Visarjana-homa*, and it is laid down that the cloth should be long enough to cover the whole post. The commentators observe that the reason of this last text is to accommodate the Adhvaryu priest by supplying him with a long piece of cloth.¹ So they say that a selfish motive being seen, there can be no presumption in favour of the Smṛiti text in question. Madhavacharya in his *versified* Nyaya on the subject puts this in a clear form.

*Visarjana
homa.*

Thus the Adhikarana does not mean that the fact simply of a reason being appended to a Smṛiti text invalidates it, but that where an unworthy selfish motive is detected to lie at the root of it, then only no presumption should be made in favour of its validity ; that is to say, in favour of its being consistent with the Veda. In fact, the reason of this rule is obvious. The sanction of the Vedic obligatory texts is the Apurva sanction of securing heavenly purity. When a selfish motive is the cause of a rule, that rule cannot be consistent with this high ideal. Hence such a rule must fail.

*Validity of
the text is
questioned in
case of selfish
motive.*

Kumarila Bhatta takes the expression "Hetudarshanat" to mean from seeing fundamental reason different from the fundamental reason of the Vedic Vidhis viz.,

*Kumarila's
view.*

१ वेदार्थनदीमार्गं वाचोऽध्वर्युः प्रकृतिः ।

the attainment of heavenly bliss.' Any Vidhi in order to be valid must have directly or indirectly this object in view. Bhatta says, this is not the case in texts grounded on considerations of error, covetousness and plausible argument which even the highest intelligence cannot prevent. ²

Apastamba.

Apastamba takes the same view and this is shown from the consideration of his discussion relating to a passage of Vajasaneyi-Brahmana.³ Mandlik refers to *Helubannigadadhikarana* in support of the broad rule contended for by him, and so does Dr. J. Siromoni.

Siromani.

But an examination of the Adhikarana itself will show what it lays down. The substance of the Adhikarana will be clear from the Vedic text to which it refers. The text is "one is to sacrifice by a winnowing fan, because rice is made by it." There is no question here that the words "sacrifice with winnowing fan" is an applicatory Vidhi of the Yaga called *Darvi-homa*.

Darvi-homa.

The question as explained by the commentators is, if making rice be the reason for the sacrifice, then there are hundred other things than the winnowing fan by which rice can be made ; why not employ any of these for the sacrifice ? The answer given is, that you can not employ any other thing for the sacrifice ;

1 इतथ न प्रमाणत्वं मूलं वनरे चयात् ।

व्यभिचारे हि नोत्पत्तिरर्थापत्यनुमानयोः ॥

Tantravartika, Benares edition, p. 104.

2 कश्चित्थान्ति कश्चिन्नोभः कश्चिदुक्तिविकल्पनम् ।

प्रतिभाकारणत्वेन निराकर्त्तुं न शक्यते ॥

Do.

Do.

3 Institutes of Apastamba, Muller S. B. E. Vol. ii pp. 1, 6-7.

for the clause "because rice is prepared by it" is only an explanatory matter in the shape of a reason. It does not control the Vidhi. In the Vidhi there is the word winnowing fan, and therefore the winnowing fan must be used. The so-called reason for the use of the winnowing fan is only an Arthavada.¹ Thus you see that this is a case of a Vedic Vidhi with a visible reason attached to it. But visible reason does not invalidate the Vidhi itself. All that the Adhikarana lays down is that the visible reason can not have the force of a Vidhi so as to control the Vidhi to which it is attached. Therefore this Adhikarana is no ground for the proposition that the statement of a visible reason in connection with a Vidhi invalidates that Vidhi.

Reason does
not invalidate
the Vidhi.

The case (Beni Prasad *vs.* Hardai Bibi) in which the above Adhikarana was cited before the Allahabad High Court, was eventually decided by their Lordships of the Privy Council not on Mandlik's erroneous construction of this Adhikarana, but on other grounds. In fact, to say that the mere fact of the statement of a visible reason as being the occasion of a Vidhi would make that Vidhi a nullity, would have the effect of reducing many Vedic Kamyas or Naimittic Vidhis to a nullity. Far from ignoring visible reasons in general, it is a well known rule with Mimāṃsā writers, that where it is possible to find a visible reason for a thing, an invisible reason should not be assumed; for a visible reason does not clash with the spiritual sanction called Apurva.

1 अथैव कुड्योति तेन अन्नं निवते । Taittiriya Brahmana 1. 6. 5.

Rule 4.—*An usage holds good if not influenced by any improper cause or perverse motive.*

Padārtha
prabalya.

This proposition goes under the name of Padārtha-prabalya Adhikarana, as I have already told you. The name perhaps is not quite appropriate. Kumarila Bhatta, as a general rule, never recognizes the nomenclature of the Adhikaranas. The name, however, may be justified in this way. Padārtha is an established thing or established fact. Usage also is an established fact. An usage is not properly an usage unless it be a settled or established fact. Therefore the name Padārtha-prabalya Adhikarana may well cover the rule enunciated. There are three Sūtras which are usually supposed to be the constituents of this Adhikarana. Literally they are as follows :

“Non-contradiction lies in non-condemnation by the wise : is that your position ?”¹

“Not that, because there are the limits of the Śāstras.”²

“But the thing is, cause not accruing, an usage is to hold good.”³

Savara
Swami's
view of the
Sūtras.

Savara Swami takes all the above three Sūtras together as forming one topic (Adhikarana). According to him the proposition in the first Sūtra, ‘Non-contradiction lies in non-condemnation by the wise’ is thrown out as the suggestion of the sound conclusion on the subject, which is formally enunciated in the concluding proposition viz., ‘no (improper) cause accruing an usage

1 श्रुताकीर्षेर्विद्वद्भ्यम् ।

Jaimini I. iii. 5.

2 न ब्राह्मणपरिभाषात् ।

Jaimini. I. iii. 6.

3 अपि वा कारणादपि प्रयुक्तानि प्रतीयेरन् ।

Jaimini I. iii. 7.

holds good.' Thus according to this view the intermediate Sutra : 'Not so, because there are the limits of the Shastra' embodies an objection (Purva puksha) which is refuted. The sense of the whole according to this view is this : Says the objector "you can not in your zeal to uphold matters outside the Vedas (ashabda) go so far as to say that the mere fact of a want of positive condemnation by well-informed personages is enough to enable you to take a thing to be not contradicted by the Vedas and therefore fit to be presumed as valid." The objector continues, "No, certainly you cannot hold so, because where there will be the rules of your Shastra prescribing this and that limit ?" To this the affirming side answers : "Well there may be the limits of the Shastra to the contrary, but when an usage has become a settled fact it must hold good if no improper cause is found at the bottom of it."

This is the logical effect of Savara Swami's view of the Sutrās. He, however, gives an example which does not throw any light on the broad features of the rule. The example proceeds upon the supposition that the usage must be one necessitated by Shastric or religious considerations ; and that all that is meant by overruling the objection which requires an usage to be within the limits of the Shastras is, that when such limits are only in the nature of rules of procedure, they are to be ignored in favour of usages of a substantive character. As for instance the Vedas have it : "Make the Vēdi and then recite the Vedas."¹ Now an usage has sprung up of performing *achman* (sipping water with suppressed breath) between the act of making the Vēdi

1 वेदं कृत्वा वेदिं करोति ।

and of reciting the Vedas. This usage can not be discarded but it must prevail, notwithstanding that it contravenes the rule of procedure presented by the Vedas. This is the way that the broad proposition in favour of usages was somewhat narrowed by Savara Swami's illustration of it.

Kumarila's
view of the
Sutras differ-
ent from that
of Savara.

Kumarila Bhatta at once sees the fact that the Swami's treatment of the subject is one in which the illustration is made to whittle away the rule. Bhatta says that the first two Sutras form one topic—the topic of religious or ceremonial usages, and that the last Sutra forms by itself a separate topic relating to worldly usages. He says, of the first and the second Sutras, the former is the refuted objector (*Purvapaksha*) and the second is the final conclusion (*Siddhanta*). According to him the objector suggests that religious practices and doctrines not condemned by the Bauddha teachers should prevail. That against this contention the affirmative side maintains that Bauddha practices and doctrines though not condemned by the wise, can not hold good because they are not within the limits of the Vedas. Having thus safeguarded the rules of religious practices, Bhatta unhesitatingly affirms that the object of the third Sutra is to allow freely worldly usages affecting business, subject only to the limitation laid down by the *Drishtamulaka Adhikarana viz.*, that a gross or perverse motive, such as covetousness and the like, vitiates a text. At first sight it appears to be a stretch of language to understand the words '*Karanagrahana*' (not taking cause) to mean not presenting any improper cause. But all the commentators have taken it in such a sense, so there can be no question about it. How and wherein

Bhatta differs from Swami is stated by Pandit Rameshwar Suri, the author of the Subodhini Vritti, in his note to the 7th Sutra, chapter III, Book I.

Rameswara
Suri explains
the difference.

The Pandit in the said note first explains the reason why an usage is taken to be authoritative. The reason suggested is indeed a subtle one. It is said that the validity of an established usage (prasiddha padartha) requires no proof. Because proof is necessary only of that which seeks recognition. That which has been recognized needs no proof.¹ Then the note goes on :—

“In this matter the Vartikkara (Kumarila Bhatta) has constructed the Adhikarana differently, as the Purvapaksha assumed in the Bhashya (Savara) is not proper. The first of the Sutras is not a part of the conclusion, but is the Purvapaksha against the view that such of the sayings of Sakya (Buddha Deva) as are not disapproved by the wise should be accepted as authoritative. According to Kumarila the next Sutra “that cannot be, because there are limits of the Shastra” is the Siddhanta (conclusion)”.² Pandit Rameshwara Suri after giving some illustrations from Bhatta's work of the above position, proceeds to explain Bhatta's view of the 7th Sutra ‘*apiva karana &c*’ as follows :

Kumarila's
view of the
7th Sutra.

1 प्रमेयगतविरोधालोचनेन प्रमाविरोधवृत्तेरुदयेन प्रमेयविरोधावगमकाले एव तथोर्वचावसंख्याप्यवगमात्तत एव निर्णये प्रमाणवसावस्येव नैराकारेणाऽनादरणीयत्वात् ।

2 अत्र वार्तिककारोऽन्यथा अधिकरणमारचयति । भाष्योक्तपूर्वपक्षास्तीतिमन्वत्वात् । शास्त्रोक्ताऽहंसादिवचनं प्रमाणमप्रमाणं वेति संशये शिष्टाकी-
पेऽविबुद्धमिति चेदिति पूर्वपक्षसूत्रम् । अस्यार्थः । शिष्टस्य युतिज्जुतिविहितस्य प्रक्षेपे व्याकोपाभावे अविबुद्धं तत्प्रमाणं भवत्विति । सिद्धान्तयति । न शास्त्रपरिमाणत्वादिति ।

It establishes
the validity of
usage.

"This Sutra 'apiva karana &c' is an independent Adhikarana to establish the validity of *sadachara* (unobjectionable usages), the other side having denied the validity of such.¹ The validity of these is established subject to the condition that they are not vitiated by motives directed against the general religious sense of the Aryas, this condition being implied by the words *karanagrahane* (not admitting of such motives &c. &c.)"

The above extract shows Pandit Rameshwara's explanation of Bhatta's views. But better it hear Bhatta's views from his own mouth. He first shows that even sound rules of conduct embodied in Bauddha books cannot be accepted by reason of the Adhikarana which according to him Sutras 5 and 6 make out. Then he lays it down :

"If the purpose of these rules of conduct can be clearly made out by some other Shastra of our own, then being so made out, those inferior Bauddha Shastras become useless." Then Bhatta proceeds :

"Therefore teachings outside those expressly contained in the Vedas and the like can not be disregarded as unproved ; hence the Sutra "*Apiva karanagrahane* etc."²

1 अपि वा कारणादृष्ये प्रयुक्तानि प्रतीयेरन् । इति सूत्रं तु सदाचारप्रामाण्यं बोधनार्थमधिकरणान्तरत्वेन व्याख्यातवान् । सदाचारोऽप्रमाणं प्रमाणं वेति संशये ।

2 यदा शास्त्रान्तरेणैव सीधैः स्पष्टोऽवधार्यते ।

तदाते नैव सिद्धत्वादितरस्याऽनर्थकम् ॥

तस्याप्यावश्यकमित्येतदेवादि शास्त्रव्यतिरिक्तं निवन्धनं तद्वर्त्मप्रमाणत्वेन नापेक्षितमिति । यत्नेतदपि वा कारणादृष्ये प्रयुक्तानि प्रतीयेरन्निति सूत्रं ।

Tantravartika, Benares edition, p. 127.

He next explains that the doubt (Purvapaksha) of this Adhikarana is, whether usages in order to be valid should be usages observed by the well-informed (shishtachara). In the course of this discussion Bhatta enumerates a series of acts, recorded in the Puranas and the Mahabharata, of heroes and persons of a sacred character, which are manifestly improper and unfit to be followed. (See Tantravartika, Benares edition p. 128). They are intelligible only by referring to special and exceptional circumstances.

Reviewing these matters he observes :—

“Who are well informed ?—Those whose actions are sound.”

“Then whose actions are sound ? Those who are well informed.”

This leaves us where we were.”¹

He then examines whether the theory that conscious satisfaction (*atma tusti*) can be taken as a test of the soundness of practice. He says that although Manu mentions conscious satisfaction as a test, others deny it.² He himself shows that conscious satisfaction is not a reliable test.³

Conscious satisfaction is not the only test of validity of usage.

1 के शिष्टा ये सदाचाराः सदाचाराश्च तत्कृताः ।

इतीतरेतराधीन निर्णयत्वादनिर्णयः ॥

Tantravartika, Benares edition p. 128.

2 सदाचारप्रमाणत्वं मन्वादिभिरपि कृतं ।

आत्मतुष्टिः कृताङ्ग्या तर्कमे सा चानवस्थिता ॥

Do. pp. 128-9.

3 कस्मिन्मायते तुष्टिरयमेव कर्माणि ।

Do. p. 129.

He solves the difficulty as follows :—

The word 'Karanagrahane' indicates that an usage should be free from the imputation of being of other than a Vedic origin—in which the desire for heavenly bliss is at the bottom. Therefore the word 'Karanagrahane' must not only mean the absence of non-Vedic and improper motives, but that it also means that the acts forming the usage must be such that a true believer in the Vedas would be likely to perform as a matter of duty.¹

Usage is valid if recommended somewhere.

You should remember that the question which has mainly engaged the attention of the commentators with reference to this Adhikarana is not whether an usage directly contradictory to the Vedas or the established Smritis can pass for good law. For when this is the case the usage must be disregarded. The question which has been discussed in this Adhikarana is, whether constructively an usage is to be held as not contradictory to the Vedas, simply because it is not condemned anywhere ; or in order to presume non-contradiction, the usage must be positively recommended somewhere. Kumarila Bhatta inclines to the view that there should be an indication of a recommendation in some shape or other. But if the three Sutras be construed together as is done by Savara-Swami—then this is not necessary ; a mere absence of *kopa* (condemnation) on the part of informed and

1 तत्प्राचारात्तदुद्दिष्टव्यं धर्ममयात्मनाम् ।

वेदोक्तमिति निश्चित्य याज्ञं धर्मदुस्तुमुभिरिति ॥

Tantravartika, p. 133.

good men is enough. Bhatta accepts this view as an alternative. He says :—

“If the three Sutras be taken to form this Adhikarana, then with an eye to the Shishtachara (practices of the wise) of the Aryavarta, doubts as to validity or invalidity thereof having arisen, the author suggests that the absence of condemnation by the wise should be the test. Then the matter stands thus.”¹

“The Shishta (wise teaching) of Sruti and Smriti is that which is not contradicted by these latter,

“Such teaching has an authoritative character,

“If such wise teaching go against then the validity is negatived,

“If it (Shishta be indifferent (wanting in condemnation) then too an usage is not invalidated thereby.”²

I ask you to mark the last sentence wherein Bhatta admits, that positive approval by those learned in the Sruti and Smriti is not necessary to give validity to an usage. It is enough if they do not positively condemn it.

Non-condemnation by the wise gives validity to usage.

Colebrooke has the following upon this Adhikarana:—

“Usage generally prevalent among good men and by them practised, as understanding it to be enjoined

Colebrooke on the Adhikarana.

1 यद्वा सूत्रमथेनात्र एतदेवाधिकरणं व्याख्यातव्यम् । इदानीं विवर्तनं निवासि
श्रुतिचाराग्नेवीदाहृत्य पूर्ववत् प्रामाण्याप्रमाण्य संदेहे श्रुतिप्रमाणैर्विरुद्धमिति
सिद्धान्तसावदुपपन्नयते । तथाहि ।

2 श्रुतिं यावत् श्रुतिस्मृत्योक्तं न यत्नं विरुध्यते ।

तच्छ्रुतिचरणं धर्मे प्रमाणत्वेन गम्यते ॥

यदि श्रुतस्य कोपः स्याद्विरुध्यते प्रमाणता ।

तदकोपात् नाचार प्रमाणत्वं विरुध्यते ॥

Tantravartika. p. 145.

and therefore incumbent on them, is mediately, but not directly, evidence of duty ; but it is not valid, if it be contrary to an express text. From the modern prevalence of any usage, there arises a presumption of a correspondent injunction by a holy personage who remembered a revelation to the same effect. Thus usage presumes a *recollection* which again presupposes revelation. Authors, however, have omitted particulars, sanctioning good customs in general terms : but any usage which is inconsistent with a recorded recollection is not to be practised, so long as no express text of scripture is found to support it."¹

What is condemnation by the Sruti or Smriti ?

With regard to the condition that an usage should not be contradicted by the Sruti or by a valid Smriti, you should understand, that an usage is contradicted by the Sruti only when it is contradicted by any obligatory text of it. It is not contradicted by the Sruti if only there are Arthavadas and the like opposed to it. There are many things in the Srutis and the Smritis, which are in the nature of an Arthavada or Pratipatti-karma (incidental acts), and as such, are not Vidhis. Usages which may have sprung up subsequently in supersession of such matters cannot be regarded as being in conflict with the Sruti, and are therefore perfectly valid. In a passage of the Brihat-naradiya Purana there is a mention of a number of such matters which, though permitted by the sacred books, have been superseded by the practice of the Kali Yuga. Then, again, this Adhikarana supplies one of the means of determining between the authority of one Smriti text and another which may be in conflict with each other. In such a case, if the rule contained in one

1 Colebrooke's Miscellaneous, Essays p. 338.

of the texts is found to be in actual operation as a matter of usage and the other to be out of use, the former will prevail.

In this connection the doctrine, called the doctrine of *factum valet*, as laid down by Dāyabhāga, and the doctrine of *vox populi*, as enunciated by Yājñavalkya,¹ and emphasised by the Mitakshara, deserve examination. In the first place, it should be observed that Jaimini's maxim in question *viz.*, the maxim regarding the force of usages (called facts) very largely applies to matters of quasi-law, such as are described to be Manu-shya Dharma (social duties) and as Pratipitti-karma (incidental duties) in several Adhikaranas of his work. Now as regards this class of matters, there can be no difficulty to give effect to usages which may have grown up in supersession of old rules in respect of such matters. These rules are only in the nature of moral rules or rules of prudence. They must yield to force of usage recognised by the positive law on the one hand and to the general public opinion on the other.

Doctrines of
factum valet
and *Vox populi*.

It will be shown in detail how the Padārthaprābalya Nyāya and the Holākā Nyāya are largely utilised directly or indirectly by the digest writers.

Rule 5.—*Matters sanctioned by the Shastras should have preference.*

The Adhikarana² is very narrowly put by the commentators as bearing on the limited question of verbal usages. But you will see that the two Sūtras of this Adhikarana are in continuation of the topic of the last

Verbal usages.

1 'यस्मिन् लोके विदितं धर्ममप्याचरेत् ।

Yājñavalkya.

2 ब्राह्मणं प्रसिद्धं पदार्थं प्रमाणाधिकरणम् । Jaimini I. iii. Adhi. 5.

Adhikarana, which deal with the subject of usages in general. As the preceding Adhikarana is general covering questions of the customary sense of words as well as customs and usages regarding conduct, so this Adhikarana relates to conflicts of usages in general including the question of conflict of verbal usages as well as conflict of usages regarding civil life. Kumarila Bhatta, no doubt, discusses the questions of conflicting verbal usages under this Adhikarana.¹ But he maintains the wide character of the rule as including usages in general enunciated. He supports the rule by the following argument: "Smriti and usage conflicting, doubt arises as to whether they are co-ordinate or unequal. To regard them as co-ordinate would create confusion, although they are traceable to a common source (the Sruti)."² So I have enunciated the rule as follows: Between two conflicting usages (either verbal or otherwise) that which conforms to the Shashtra is to prevail.

The Sutra introducing the Adhikarana as by an opponent runs thus :—

'If in them (facts established by usage) no disagreement be observed (with the Vedas), this would give rise to the confusion of co-ordinates.'³ The meaning of

1 एकशब्दमनेकार्थं श्रुतैराचर्यते यदा ।

विगानेन तदा तत्र कीदृशः स्यात्पारमार्थिकः ॥

Tantravartika, Benares edition—pp. 145.

2 कृत्वाचार विधीषे वा साव्यवैषम्यसंग्रहे ।

समा विप्रतिपत्तिः स्यान्मृत्साम्याद्द्वयोरपि ॥

Do. p. 150

3 तेनैवदर्शनाद्विरोधस्य समा विप्रतिपत्तिः स्यात् । Jaimini I. iii. 8.

this is that, if you accept the principle of every fact established by usage to be valid on the supposition of being consonant to the Vedas, then all such facts will be in a co-ordinate position with equal weight, and in that case how will you discriminate between them if there be conflict among them ? The answer is given as follows :

“(There will be no difficulty in preferring one to another by considering) which of them is found in the Shastra or is borne out by its principles.”¹ The meaning is, that in case of conflict between two usages, that one which is found in the Shastra or is conformable to it should prevail. You will observe, however, that an usage wholly outside the limits of a Shastra would be perfectly valid by the preceding Adhikarana, if there be no other usage in rivalry to it. The consideration of Shastra comes in, when there is more than one usage on the same matter and in the same locality. In the same locality and with regard to the same community, two conflicting usages should not be tolerated. One of them must be eliminated by the aid of the Shastra. But, on the same matter, there may be two different usages in two different localities or with regard to two different communities. Jaimini would not regard these differences as conflicts. That in such a case there is no conflict but merely differences of application, is shown by Jaimini in chapter IV of the second Book, beginning from Sutra 8 downwards. In these Sutras, he makes out that the different practices of the different Shâkhâs are merely different applications of the same Vidhi. Kumarila concludes his discussions on this topic by the

Conflict between two usages.

१ ब्राह्मणं वा तद्विहितम् ।

Jaimini I. iii. 9.

observation that, in order to determine whether an usage is in accordance with the Sruti, the secondary means of proof should not be disregarded, such as figurative sense, splitting of sense &c. He also says, that in cases of doubt, the benefit of the doubt should be given in favour of the usage which savours of a Vedic character.¹

"If both the Vedic conclusion and Laukika (popular) conclusion be clear and self evident, the former prevails without saying. Therefore that conclusion which is arrived at by Shastric materials alone is superior and can not be placed on the same footing with usages of a restricted, far-fetched and mixed character."²

Having disposed of the fifth rule, I should have in turn taken up the sixth now, following the order in which they occur in Jaimini's Book. But it would be convenient to take up the rule of the Samanya Sruti Kalpana or Holaka Adhikarana at this place, reserving the sixth rule regarding the use of foreign words to be dealt with later on.

1 किं वाच्यवचित्पञ्चननात्सेव दुर्वला ।

एवं नागोपपत्तिवात् संदेहे तावदुच्यते ॥

मिश्रकृत्याक्रियाद्वारा प्रतिपत्तिर्वलीयसी ॥

शास्त्रस्या वेत्तव्येनासी कल्यापिहि वलीयसी ॥

Tantravartika, p. 156.

2 लौकिकी पतिपत्तिर्हि स्वार्थे निःसंशया स्थिता ।

वेदिकपि तथा स्वार्थे बाधतेऽतो विपर्ययात् ॥

तस्याप्यास्त्यतेवेका प्रतिपत्तिर्वलीयसी ।

न समानुक्तकाचारेर्विप्रलटैः ससङ्करैः ॥

Do. p. 155.

Rule 7.—*An usage or Smṛiti must be reduced to the short, simple and general form of a Vedic Vidhi.*

The Padārtha-prabalya Adhikarāna establishes the validity of usages in general, provided they are not vitiated by any perverse motive or the like. The Śāstra-prasiddha-padārtha Adhikarāna lays down that in case of conflict between usages that which conforms to the Śāstra is to prevail. But usages are often cum-
brously expressed and they are often observed only by certain sections of the people or obtain only in particular parts of the country. By the Padārtha-prabalya Adhikarāna when they are not contradicted by the Śruti, a presumption is to be made in favour of their validity. The question arises how is this presumption to be made? Is everything in connection with the usage to be embodied in the rule of law to be presumed? Again if it obtains with particular sections of the people or in particular parts of the country, should the rule to be presumed, be in a particularized and limited shape? These questions are answered by the principle stated in the above rule, which says that the Vidhi to be presumed should be a simple and general one. Such a solution, however, raises another very serious question viz., if a general Vidhi applicable to every place and to every person is to be presumed, even when the custom or usage is really local or tribal, then the effect is to abolish local or tribal customs. Not only this, there would be the further effect of bringing into existence general rules in the place of what were intended to be local or tribal.

Holaka
maxim.

The Mīmāṃsā mode of treatment of the subject, however, prevents the above difficulties. The Mīmāṃ-

sakas always keep in view the distinction between a general Vidhi embodying a general principle, and Vidhis which provide the mode of the application of such a general Vidhi to particular cases. The Vidhis of the former class are called Utpatti Vidhis, and those of the latter class are called Viniyoga or Prayoga Vidhis. The Utpatti Vidhis can never be local or tribal, but the Viniyoga or Prayoga Vidhis are from their very nature local or tribal. The Mimânsâ idea is when you enunciate a rule of law regarding any usage or custom, you should make it general as inculcating the principle of it, leaving it to be extended to any place and to any people. But it does not follow from it that, as a matter of fact, it obtains universally.

With these preliminary remarks, now let us examine the Samanya Sruti-kalpana or Holaka Nyaya.

Sutras relating to the maxim.

The word Holaka means 'the spring festival' named *Holi*. I shall, first of all, give the Sutras composing this Adhikarana, and then consider their effect as discussed by the commentators. The Adhikarana begins with the suggestion of the opponent, 'if a presumption is necessary) a presumption co-extensive with the usage would do to make it authoritative'.¹ The opponent means to say that, if there be an usage for the *Holi* or spring festival for the eastern part of India, it may be simply presumed that the Veda enjoins that the *Holi* festival should be performed in the east only.

The answer is :

"No, a duty should be a duty of all men following

¹ अनुमान व्यवस्थानात् तत्संयुक्तं प्रमाद्यं स्यात् । Jaimini I. iii. 15.

(the well-known) characteristics of an injunction (to which it is to correspond.)"¹

"The application of the injunction must be guided by the facts observed."²

"It may be named after a particular place with which it may be associated."³

"If you say that it can not apply to another place."⁴

"Why not, a name is a name from association, just as one would say this is of Mathura."⁵

"Again there is no modifying indication of the eternal Vidhi."⁶

"The act of duty has a direction as in the case of a sloping place."⁷

"An act of duty remains the same by reason of duty being a virtue of the person."⁸

All these Sutras lead to the conclusion that where there is a local usage, the presumption that is to be made, is not of the existence of a local Vidhi. The Vedas know no local Vidhi. According to the universal character of the Vedas, the Vidhi that is to be presumed will be a general Vidhi not restricted to any place.

Conclusion.

- | | |
|--|---------------------|
| 1 अपि वा सर्वं धर्मः स्यात् तज्ज्ञायात् विधानस्य । | Jaimini I. iii. 16. |
| 2 दर्शनात् विनियोगः स्यात् । | Jaimini I. iii. 17. |
| 3 आख्या हि देश संयोगात् । | Jaimini I. iii. 19. |
| 4 न स्यात् देशान्तरि इतिषित् । | Jaimini I. iii. 20. |
| 5 स्यात् योगाख्या हि मायुरवत् । | Jaimini I. iii. 21. |
| 6 सिद्धभावात् च नित्यस्य । | Jaimini I. iii. 18. |
| 7 कर्मधर्मौ वा प्रवचवत् । | Jaimini I. iii. 22. |
| 8 तुल्यं न कर्मधर्मौ च । | Jaimini I. iii. 23. |

But a general Vidhi is not to be applied in all places and with reference to all persons ; but according to the facts observed in each case. Then it comes to this that the Vidhi will be general, but the application may be local. But even when the application is local, duty being a personal obligation, it follows the person wherever he goes.

The Vidhi is general though custom is local.

Thus if the festival of the *Holi* prevails among the people of the east, and if they migrate to the west, there also it will be their duty to celebrate the festival. Accordingly a custom is never strictly local. It is in theory universal, but in practice and application it may belong to a particular family. The commentators generally support this conclusion, although the particular lines of discussion followed by them are not very clear as to their drift. But even as regards the restrictions to particular classes they are of a changeable character. The people belonging to a class may in course of time give up one set of usages for another. The views of Kumarila Bhatta on the topic are thus given by Colebrooke. "Nor are rituals and law institutes confined to particular classes, though some are followed by particular persons preferably to others as Vashishtha by the Bahvrish Shâkhâ of the Rik Veda.; Gautama by the Gobhiliya of the same Veda ; Shankha and Likhita by Vajaseneyi ; and Apastamba and Baudhayana by the Taittiriya of the Yajur Veda. There is no presumption of a restrictive revelation, but of one of general import. The institutes of law and rituals of ceremonies, were composed by authors appertaining to particular Shâkhâs, and by them taught to their fellows belonging to the same and have

continued current among the descendants of those to whom they were so taught.”¹

The above is the substance of the passage from Tantravartika extracted in the footnote.² Bhatta supports the conclusion of the Adhikarana by the Sarbadhikara Nyaya (the principle that every one is competent to perform a particular religious duty).³ But according to Bhatta's own exposition of Padarthaprabalya Adhikarana (usage principle) usages validated by that Adhikarana are not religious duties but merely worldly duties. He says :

“In usages called *Achara* (practice) other reasons than the spiritual reason being seen there is no Shastric evidence thereof, therefore—there being the connection of wealth and pleasure there is no religious character in them.”⁴

1 Colebrooke's Miscellaneous Essays, p. 337.

2 पुराणमानवेतिहासव्यतिरिक्तं गौडमवशिष्टशङ्ख लिखितहारीतापस्तम्बबोधायनादि प्रणीतधर्मशास्त्राणां गृह्यन्यानां च प्रातिशाख्यलक्षणावप्रतिषरणं पाठव्यख्यापलभ्यते । तद्यथा गौतमीयगोमिलौये ऋग्वेदेर्गरेव च परिगृहीते । वाशिष्ठं बह्वचरेव शङ्खलिखितोक्तं च वाजसनेयिभिः । आपस्तम्बीय बोधायनं नीयेतन्तिरोयैरेव प्रतिपन्ने इत्येवं तत्र तत्र गृह्यव्यवस्थाभ्युपगमादि दर्शयित्वा विचारयितव्यम् ॥

Tantravartika, p. 179.

3 तस्मात् सर्वाधिकार न्यायज्ञाद्विधानस्य व्यवस्थित देशाचार गृह्य धर्मसूत्र निबद्धधर्माणामपि सर्वधर्मत्वम् ।

Do. p. 185.

4 दृश्यमानान्य हेतुवाद्भावात् शास्त्रप्रमाणता ।

• तस्मादर्थं सुखाङ्गत्वान्नाचारेवति धर्मता ॥

Do. p. 145.

The Holaka
maxim relates
to religious
ceremonies.

Therefore a local or tribal custom of a secular nature falls outside an Utpatti Vidhi which must be universally applicable. The Adhikarana in question which lays down that a religious ceremony, which is customary in the east must be taken to be universal, relates to religious ceremonies. The very Sutra which follows—*Nityasya alingatvat*—the eternal not having particular signs—shows that the Adhikarana does not apply to local or tribal customs and usages of a secular nature. In fact, if the Adhikarana were intended to apply to local or tribal customs, the effect would be, the abolition of all such customs by generalizing them. This would place the Mimânsâ Shâstra in opposition to the Smritis, such as Manu, Yajnavalkya and others. But this is far from the intention of the Mimânsakas. Kumarila Bhatta expressly refers to Manu and other Smritis to strengthen his position regarding the Padartha-prabalya maxim or the maxim recognizing the validity of local customs. Bhatta says : “By the Smritikaras, among other things, it is admitted that whatever usage obtains among the good men of a place it is called *Sadachara* (sound usage).”¹

Mimansakas
recognise
local or tribal
customs in
case of world-
ly matters
but not in
case of reli-
gious matters.

It is clear, however, that although the Mimânsakas leave room for local and tribal customs as regards worldly matters, in respect of religious matters they are decidedly opposed to the growth of local or tribal customs ; for, the maxim declares that in the case of such usages the Vedic Vidhi to be presumed must be generally worded by ignoring whatever might give

१ साधूनां यस्मिन् देशे य आचारः स सदाचार उच्यते ।

Tantravartika, p. 143

it a local or tribal colour. Thus according to the Holâkâ maxim a local or tribal usage is not recognised by the Veda, only the general element in it is recognised. Upon the whole, Jaimini's Sûtras without invalidating local or tribal customs, do not encourage them. The reason of this is obvious. Jaimini wanted that the whole of the Aryan community should be guided by uniform rules, and should not be divided at least in matters of religious practices. You will see, however, that this discouragement of local differences in matters religious, has not proved very efficacious, as the points of difference between local communities are countless. As regards matters not purely religious, by the usage maxim, local or tribal customs which are not condemned by the wise are good, while those condemned are invalid. Jaimini takes no note of the condemned practices ; but recognises approved usages only. The great Manu enumerates all usages approved, condemned or indifferent ; for instance, as regards marriages, he enumerates eight forms of marriages as a matter of fact. Of these eight, two—Paishâcha and Ashura—he absolutely disapproves ; three of them he approves, and three others he practically treats as indifferent. The effect of the discrimination is, that not only those forms of marriage which are condemned have gone out of use, but that the indifferent ones have also been discarded ; and even of those which are approved, such as have become out of place according to circumstances have also mostly disappeared, and now only the best one *viz.*, the Brahma form of marriage more or less prevails. Similarly having described twelve description of sons, Manu in a manner expressed a disapproval of the last

Jaimini speaks of only approved usages but Manu enumerates all sort of usages.

The Brahma marriage prevails and the others mostly disappeared.

six kinds of them and these have gone out of use ; and of the remaining six also, four have generally fallen into disuse. Such is the way in which unwelcome customs disappear, even without the help of a mixim like the Holâkâ.

The rule 6.—*An authorized matter expressed in foreign words, must be understood in the sense that those words bear in the foreign language.*

Very little
foreign influ-
ence at the
time of
Savara.

Kumarila
condemns
foreign usage.

I have already told you that the Sutra, to which the above proposition is attributed, does not expressly contain any reference to any Mlechha (foreign) words. So it seems that originally no language or civilization other than that of Aryavarta had made any impression upon the Indo-Aryans. But at the time that Savara Swami wrote his commentary, some foreign influence has affected the Brahman literature. But such an influence had not assumed any aggressive form. It was evidently received in a spirit of welcome. It appears, however, that later on foreign influences became aggressive, and the result was, that the Indo-Aryan community became strongly conservative and began to cultivate a zealous *swadeshi* spirit. Thus we find that Kumarila Bhatta never loses a single opportunity of condemning Mlechha language and Mlechha usages. His attack upon the Bauddhas are also very marked. In his discussions on the Shastra-prasiddha-padartha Adhikarana Bhatta says :

“It is foreign (Mlec'ha expressions) that by false similarity to pure expressions produce error and weakness and thus leads to substantial delusions.”¹

(1) यथा साधनरूपत्वात् प्रसादाशक्तिर्निर्वाप ।

जायते वाचकवार्तित्वस्यैव चोक्तमाश्रिते ॥

Tantravartika, Benares edition, p. 149.

In this Adhikarana the position is such that it is impossible to dispense with foreign words and their foreign meaning. This is explained by Bhatta. He introduces this Adhikarana by the following sloka :

"Those words which are not current with the people of Aryavarta : Whether such words should or should not be understood in the sense in which they are used by the Mlecchas ?"¹

"If by grammatical manipulations, following the Nirukta, a sense can be made, whether such sense should be preferred or the whole thing should be understood as it is understood by the Mlecchas ?"²

Later on he answers the above questions as follows :

"Expressing parts of sacrificial duty, corrupt Aryan words are distinctly found. Why then can not such parts of duty be sanctioned in Mleccha language ? This holds good in the absence of any indication to the contrary. Thus the terms Pika and Nema and others like them are settled by the learned."³

"*Choditam* means taught, or employed or incorporated into a transaction. Matters first settled by the

- (1) ये शब्दा न प्रसिद्धाः स्मृत्या न निवासिनाम् ।
तेषां स्नेच्छप्रसिद्धीर्थां याज्ञोनेति विचिन्त्य ॥

Tantravartika, Benares edition, p. 155.

- (2) निरुक्तव्याक्रियाद्वारा प्रसिद्धिः किं बलीयसी ।
समुदाय उद्दिष्टां स्नेच्छस्य वाच्यं वा भवेत् ॥

Do. p. 155.

- (3) यत्तु वेद तदङ्गेषु पदं दृष्टमविप्रुतं ।
स्नेच्छभाषासु तद्वगम्यै कचन चोदितम् ॥
ततः तथैव प्रतीयत प्रम वेनावि... नः ।
पिकर्तृमादि तद्वगम्यै विप्रुतवधाः परतम् ।

Do. p. 158.

Mlecchas, were subsequently known by the Aryas or by those who knew both the languages."¹

Foreign
usages when
valid.

The above clearly shows that the question is not simply a verbal one, it really relates to the adoption of Mleccha usages as valid when such usages are referred to in the Shastras. In fact the question of the meaning of the term Pika arises in connection with an usage of giving *dakshina* (present to the priest) of a black cuckoo. In the Shashtra *Prasiddha Adhikarana* terms are taken into consideration which have conflicting senses, one sense according to the definition of the Shashtra, another according to vulgar or Mleccha usage; for instance the terms *yava* (barley), *baraha* (a pig), have each a meaning according to the *Nirukta* (Shastrik terminology), but they also respectively mean *priyangu* a particular weed other than *yava*, and *vyasa* a crow in some provincial dialects. By the *Adhikarana* referred to which lays down that in cases of conflict a Shastrik usage is to prevail over a popular usage, the words are taken as defined in the Shastras to the exclusion of the popular meanings thereof. But in the case of the Pika the word is foreign and it has only one meaning, therefore there is no help taking it in this meaning.

Two other
Adhikaranas.

I have given you seven general *Adhikaranas* specially bearing on the *Smriti* and usage laws. There are two others, the last but one and the last of the chapter which also require some explanation. These are respectively

१. चोदितं क्षुपदिष्टं वा प्रयुक्तं वा क्रियागतम् ।

क्षेत्रवृक्षं पशुद्वयं वैश्वदेवैः कथितम् ॥

Do. p. 158.

called the 'Shadhupada Prayuktaja Adhikarana' and 'Lokavedayo Shabda Aikyata Adhikarana' including Akritishakti Adhikarana ; the former meaning 'the topic of the purity of language' and the latter 'the topic of the identity of popular and Vedic terms.'

In the former topic the principle laid down is that, in sayings which represent usages, if vulgar terms occur wanting in precision of idea, pure words having a precise meaning which correspond to them should be substituted to make out their sense. For example, in vulgar expressions you find the terms '*gavi*, *gouri*, *gopalika* etc.' used in relation to cows in various shades of meaning. The Sanskrit word '*gau*' has a precise meaning. This being the case, in the place of those vulgar words, the word *gau* should be substituted. Apart from the consideration of precision, to allow the use of a number of words to denote the same idea, would be creating confusion. This is the *rationale* of the Adhikarana. Sri Bhatta Sankara reads it as laying down the principle that a multiplicity of synonyms is barred by a single appropriate term. He puts it shortly as follows :

"Many words are barred by one."¹ The Sutras on the subject are the following :—

The objector suggests : "As regards matters of common usage (Prayoga) the Shastras do not recognise their sacred origin (utpatti), therefore the words used therein follow no law."²

1. एकशब्दत्वेन अनेकशब्दव वाच्यते ।

2 प्रयोगोत्पत्त्यन्वयाख्येन न व्यवस्था स्यात् । Jaimini. I. iii. 24.

The author answers : "(There must be some principle regarding such words) as all words proceed from human efforts and therefore, merit and demerit attach to them."¹

"Many words to signify one object are not proper."²

"In such cases (*i. e.* when there are many vulgar words indifferently applied to the same thing) the real meaning is made out only by special reference (to rules)."³

Preference
of Sanskrit
words in in-
terpreting
popular
sayings.

The short point of the whole of this discussion is, that where there are on the one hand many vulgar words and on the other a pure Sanskrit word applicable to the same thing, the Sanskrit word being pure and precise, should be adopted to interpret the language of popular sayings.

The words to
be understood
in their
general sense.

In the other topic—that regarding the identity of sense of the same words occurring both in the sacred books and in popular language, the principle laid down is, that they are identical in sense only as regards the general denotation (*Akriti*). Bhattasankara reads this *Adhikarana* as stating that, when a word has acquired various shades of meaning, it should be understood in its general sense which is one and the same. He puts it shortly as follows :

"A single sense bars many senses."⁴

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- | | |
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| 1 शब्दे प्रयत्ननिपत्तेरपरावश्य भागित्वम् । | Jaimini. I. iii. 25. |
| 2 अन्वयस्थानिकशब्दत्वम् । | Jaimini. I. iii. 26. |
| 3 तत्र तत्त्वमभियोगविशेषात् स्यात् । | Jaimini. I. iii. 27. |
| 4 अनेकार्थनेकार्थत्वं वाच्यम् । | |

In the phraseology of logic every general word has a connotation and denotation. For instance, the word 'cow' connotes all varieties of cows ; but it denotes a class (Jati) excluding all differences between one cow and another. In its connotation the word comprehends many a species of cows. In its denotation it only indicates an abstract idea common to all species.

According to Mimāṃsakas 'Akriti' means denotation and 'Vyakti' means connotation. The Akriti Adhikarana lays it down that one and the same word occurring in the Vedas and in popular language, agree in meaning only in so far as the Akriti (the general sense) is concerned, and not in respect of Vyakti (special sense). The Sūtras on the subject are as follows. The opponent says :

Akriti and
Vyakti.

"Expressions of popular usage having the character of Vedic commands in every respect the terms of the one must be identified in sense with the terms of the other."¹ Further he argues :

"Because (generally) operative terms (Shābdas) do not necessitate the use of any particular thing."²

"Yet sometimes it is seen that operative terms require the use of a particular thing."³

Thus the opponent says, terms of popular sayings must coincide in sense with the terms of the Vedas both as regards connotation as well as denotation. In other words, they are identical in every possible significance. The author says :

1 प्रयोगचोदनाभावादर्थे कस्मिन्विभागात् । Jaimini I. iii. 30.

2 अद्रव्य शब्दात् । Jaimini I. iii. 31.

3 अन्यदर्शनाच्च । Jaimini I. iii. 32.

“ No, they are identical only in general sense (Akriti) as simply indicating a class of acts.”¹

The meaning is this, that a term which occurs in the Vedas, may have acquired many peculiar additional meanings in course of time. But such terms must be taken only in a general sense and not in a special or particular sense.

Three striking points.

There are three points which press themselves on the attention of one who reads the chapter of Jaimini's Sutrās (chapter III Book I.) on the subject. The first point is and it is a very striking point that Jaimini does not mention, even does not allude to, any Smṛiti work by name in this chapter. The second point is the vague way in which the maxims or Adhikaranas wherein the rules are enunciated, are designated. The third point is that though the word Śāstra is often used by the commentators, there is no definite idea given regarding its meaning. I am afraid a discussion of these points is not quite within my province.

१ वाङ्मयस्य क्रियास्येति ।

Jaimini, I. iii. 33.

LECTURE V.

THE MIMANSA NYAYAS OR THE SPECIFIC PRINCIPLES OF MIMANSA CALLED NYAYAS (MAXIMS).

Section I. Introduction to the topic.

What a Nyâya or Adhikarana is, has already been explained. Colebrooke translates it into the English word Maxim. It is convenient to accept that translation. A Nyâya or Adhikarana, from a lawyer's point of view, corresponds to what in our modern Law Reports is put down as the head-note of a decided case. Of course, the way in which a Nyâya is arrived at, is different from that in which statements of points decided by a Court of law in a litigation between parties are arrived at. A Nyâya is, in some respects, like the statement of a judicial principle by judicial savants, such as a maxim of Roman Law. But these statements, known as maxims of law, do not carry with them arguments pro and con, and do not purport to be the result of any such arguments. The Nyâyas are characterised by a process of such arguments and form the conclusion thereof. In this respect they resemble the head-notes of decided cases.

Nyayas
resemble
head-notes.

I have given you before, how Colebrooke analyses a Nyâya or an Adhikarana. The following analysis is given by professor Maxmuller :

"In order to discuss a subject more fully, and to arrive in the end at a definite opinion, the authors of the Sutras are encouraged to begin with stating first

Maxmuller's
analysis of a
Nyaya.

every possible objection that can reasonably be urged against what is their own opinion. As long as the objections are not perfectly absurd they have a right to be stated and this is called the *Purvapaksha*, the first part. Then follow answers to all these objections and this is called the *Uttarapaksha*, the latter part ; and then only are we led on to the final conclusion (the *Siddhanta*). This system is exhaustive and has many advantages, but it has also the disadvantage, as far as the reader is concerned, that without a commentary he often feels doubtful where the cons and the pros begin. The commentators themselves differ sometimes on that point. Sometimes again, instead of three, a case of *Adhikarana* is stated in five members, *viz.*—

1. The subject to be explained (*Vishaya*).
2. The doubt (*Samsaya*).
3. The first side or *prima facie* view (*Purvapaksha*).
4. The demonstrated conclusion (*Siddhanta*).
5. The connection (*Sangati*)."

Knowledge
of general
principles is
indispensable.

It has been seen that the *Mimânsâ* general principles of interpretation called *Sruti*, *Linga*, *Vākya* and *Prakarana* correspond more or less to the modern general principles of interpretation called the *Literal principle*, the *principle of interpretation by Context* and the like. The *Mimânsâ Nyāyas* would correspond to decided cases falling under one or other of the last mentioned general heads. In fact, many of the *Nyāyas* (maxims) are particular cases of the principles of *Sruti*, *Linga*, *Vākya* &c. Each of these last mentioned principles forms a stem from which the numerous *Nyāyas* spread as so

many branches. Therefore a thorough knowledge of the general principles is necessary before one proceeds to examine the Nyâyas. I believe I have made you familiar enough with them by the preceding four lectures. Savara Swâmi and Kumârila Bhatta explain the general principles at pretty great length. Of these two great Mimânsakas, Bhatta being the later, proceeds more scientifically. He is, in fact, the leader of the Mimânsâ Literature. He is to the Mimânsâ what Sankarâcharya is to the Vedânta. In fact, the two were brother workers in the general battle between Hinduism and Buddhism.

As regards the two general principles, Sruti and Linga, the rule propounded by Bhatta as well as by Savara is, first of all, to find out the leading word or phrase in a text.¹ And if that word or phrase is clear in meaning, then the text is a Sruti. For, when you find the leading word or phrase which is the soul of the text to be clear in sense, the rest also becomes clear, read in the light of it. For instance, the words '*Gârhapatyam Upatishthate*' which are the burden of the text '*Aindryâ Gârhapatyam Upatishthate*'² being clear, the whole text becomes clear. Again where you find that the leading word or words of a text are not directly and definitely expressive, as, the word *Dami* in the text *Barhi Deva-sadanam Dâmi*,³ the uncertainty has to be removed by

Leading word or phrase in a text to be found out in cases of Sruti and Linga.

१ अथ वा नान्येकवाक्यत्वात् इन्द्रप्राधान्यं गार्हपत्यप्राधान्यं वा उपख्यानस्य । कुतस्तर्हि ! इन्द्रशब्दत्वात् मन्त्रस्य इन्द्रप्राधान्यम् द्वितीयाविभक्तिवचनात् गार्हपत्यप्राधान्यम्, तस्मात् श्रुति विद्वद्दयोर्विरोधः ।

Savara Bhasya, Jibânanda's edition, p. 315.

२ ऐन्द्रा गार्हपत्यम् उपतिष्ठते ।

३ वह्निं देव सदमं दामि ।

What are the
leading
words.

indications afforded by other words, either in the text itself or in other texts by the principle of *Linga*.

Gâgâ Bhatta in his well-known work '*Bhatta-Tarka-Pâda*,' and Khânda Deva in his equally valuable work '*Bhatta Rahasya*,' explain how in some instances the word or words expressive of the tense and mood are the leading words, and in other instances the words denoting the case are the leading words. For instance, when time or the manner of an action is the essence of a proposition, the words expressing the tense and mood are important. But when the essential point is, 'what is the object of an action', the accusative case is the leading thing; and when the essential point is 'by whom an action is to be done,' the instrumental case becomes prominent and so on. Thus the whole key of *Mimânsâ* interpretation is, to find out the leading word or words of a text as distinguished from subordinate words. If the meaning of such word or words is clear, it is a *Sruti* enjoining an action or defining a thing. If the leading words are traceable, but their meanings are uncertain, you have to find out the precise meaning.

Four classes
of *Nyayas*.

It is possible to arrange many of the *Mimânsâ Nyâyas* under the heads of general principles. But, perhaps, it would be better to classify them partly with reference to the general principles, and partly, according to the nature of the purpose they serve. In this latter way, they may be divided into four classes.

I. Those that relate to the interpretation of words.

II. Those bearing on the construction of sentences and texts.

III. Those bearing on the interpretation of prohibitory and apparently conflicting texts.

IV. Those of a miscellaneous character.

Section II. Maxims relating to the interpretation of words.

Class I. Maxims relating to the interpretation of words, may be subdivided into the following groups.

Group A. Maxims of the nature of the Sruti principle as regards the interpretation of words, as for instance, those laying down that words are to be taken in their usually accepted or popular sense.

Three Sub-
divisions of
class I.

Group B. Maxims partaking of the character of Linga principle showing either cases in which a word is used more or less in a technical or special sense indicated by the scope of the subject ; or cases in which the usual sense of the word is contracted, extended or varied by the context, or where a figurative sense is indicated.

Group C. Maxims allied to the principle of Vākya, laying down presumptions with regard to the number and gender of words.

In the order of the classification I have made, I begin with the maxims of the several groups of class I.

Class I. Group A.

(i) The maxim :—The sense attached by current usage is to prevail.¹

There is the Smṛiti text : “By *achamana* proceed to begin the ceremony.” In the Vedas the ceremony

1 पदार्थे प्रावल्याधिकरणम् ।

Usage sense. is to begin not by *achamana* but by establishing the Vedi. Now there are two questions which arise from the above texts. First is, whether the meaning of the term *achamana* in the Vedas is different from the current meaning of the word. By the Adhikarana, called the Padarthaprabalya Adhikarna, the current meaning of the word *achamana* prevails. The other question is regarding the varying modes in which *achamana* may be practised. As to this the conclusion is, that the current usage is to prevail and not the obsolete Vedic usage.

Popular meaning. (ii) The maxim : -The popular meaning overpowers the etymological¹.

Take for instance the term '*pankaja*' (marsh grown). The etymological meaning is any thing that grows in the marsh. But the popular meaning of the word is 'lily', which is only one out of many plants grown in the moist. This latter sense of the term prevails.

(iii) The maxim : -The Sruti sense is not to be avoided.

Sruti sense. There is the text : "True way of worshipping Vishnu is to worship Keshava." Now is the word Keshava to be understood in its literal sense or is it to be taken as indicating any form of Vishnu? The decision is, 'the usual sense which strikes one at the pronunciation of the word is its meaning'. 'If the word Keshava had not been expressly mentioned,' adds Udichya Bhattacharya, 'then there would have been

१ रुदिर्यीजमपहरति ।

room for finding out the proper name by the Linga principle.'¹

(iv) Foreign words are to be taken in the sense which they bear in the foreign language, provided such sense can be rendered into Sanskrit. For instance, the foreign word *tamarasa*. Its meaning with the foreigners is lily flower. It should be taken in that sense, though such a sense of the word is not to be met with in the Nirukta (the Vedic vocabulary).²

Foreign words in their foreign sense.

(v) When an ancient text (such as of the Vedas) and a modern text contain the same term, the term must have the same meaning.³

Same term in modern and ancient texts.

Class I. Group B.

(i) The maxim called the wooden sword maxim.⁴

'What is prescribed as a means to an action, is to be taken in a sense suited to the performance of the action.'⁵

Wooden-sword maxim.

An illustration of this maxim is given in the following :

Potsherd (*kapāla*) in connection with a Yajna means a baking earthen vessel, it is not necessary

1 अथ श्रुतशब्दात्यागः । यथा तद्विचो रिति कैश्वं यजते इति अथ कैश्वं वाचकनाम्नां वङ्गनां सत्वात् केन नाम्ना उल्लेख इति तत्र सिद्धान्तः यथा श्रुतवीहारेण वक्तव्यमिति वीहारी व्यवाहारः तथाच उत्पत्ति वाक्यस्य वलवत्वात् कैश्वतुल्याहं न न मन्त्रस्य विधिंति यव विधीनामनास्ति तद लिङ्गस्यं याच्यं ।

Adhikarana Kaumudi, para 80.

2 अक्षिप्रसिद्धपदार्थं प्रामाण्याधिकरणम् । Jaimini I. iii. Adhi. 6.

3 प्रयोगचोदना भावादर्थेकत्वमविभागात् । Jaimini I. iii. 30.

4 स्कादि न्यायः ।

5 द्रव्यं चोत्पत्ति संयोगात् तदर्थमेव चोच्यते । Jaimini III. i. 11.

that the vessel should have that particular shape which the word usually denotes.

Sword (spha) in connection with a Yajna means a pushing instrument and not a cutting instrument, for a Yajna requires no cutting instrument.

(ii) The Aruni maxim or the red-coloured maxim.

Aruni
maxim.

When a thing is presented to serve the purpose of an action and there are more than one adjective used in the text relating to the action, all the adjectives must be taken to refer to the particular thing and not to separate things to be implied.

The maxim is illustrated by the text :

'He is to buy *Soma* with red-coloured, an year old and yellowish-eyed animal.'¹

In this text the adjective 'red-coloured' must be taken to refer to the animal as well as the other two adjectives, and not to something else to be implied ; as for instance, cloth. That is, the sentence is not to be read, as if it were, he is to buy *Soma* with red cloth and with an year old and yellowish-eyed animal. For, that would violate the axiom of Laghava (simplicity). The maxim further teaches that the qualifications that the animal with which the *Soma* is to be bought should be red-coloured &c., are not to be taken as conditions precedent to buying the *Soma*, but as mere descriptions of the animal with which it is to be bought, to secure that it should possess a reasonable purchasing power.

Savara Swâmi has a long discussion upon this maxim.

१ अथवा एकवचनं पिबित्वा सोमं क्रीणाति ।

Taittiriya Samhitâ 6. 1. 6-7.

(iii) The maxim :—Words which are used in the Shâstras ought to be taken in the sense attached to them by Shâstric usage.¹

Shâstric
usage of
the words.

For instance, the word *yava* has two meanings. It means *barley* and it also popularly means another kind of corn of the same species called *priyangu*. In which sense is the word to be taken ? As used in the Vedas, for instance, in the text *yava mayascharu* ? The answer is, the Shâstra defines the word *yava* to mean *barley*, therefore the word must be taken in that sense and not in the other sense. Similarly when there are two usages covering the same ground, one that is prescribed by Shâstra is to prevail.

(iv). The Sarvasva-dakshina maxim.

If to interpret a word literally would make another word meaningless the former should be interpreted in a qualified sense. There is the text :—"In the Vishvajit sacrifice the priests shall have 'sarvasva' (the whole property) as presents ; in the Sarvajit sacrifice they are to have some trifling presents ; in the Sarvamedha sacrifice they are to have the whole property as well as some trifling presents." In this text if you construe the word *sarvasva* (whole property) literally, there would be no meaning in the expression 'they are to have the whole property, as well as some trifling presents.' Therefore the meaning of *sarvasva* is land and valuables excluding earthen pots &c.²

When the
word is used
in a qualified
sense.

1 शास्त्र प्रसिद्ध पदार्थे प्रावक्ष्याधिकरणम् । Jaimini I. iii. 5.

2 अथ सर्वस्य दक्षिणाधिकरणम् । उद्गाढपूर्व्यान् विश्वजिति प्रतिस्रोत पूर्व्यान् सर्वजिदादिषु चतुर्दशसु सर्वमेधेऽभयमिति युत्या विश्वजिति उद्गाढ-प्रधानाः षोडशर्त्विजः सर्वजिदादौ प्रतिस्रोतप्रधानाः षोडश सर्वमेधे तु उद्गाढ-प्रधानाः प्रतिस्रोत प्रधानाश्च । Adhikarana Kaumudi, para 4.

(v). The Phalachamasa maxim.

When in a
technical
sense.

When the context indicates a technical sense of a word, it should be taken in such technical sense and not in its literal sense. There is the text :—‘Among the priests the remnants of the *homa* fruit cup (Phala chamasa) should be distributed for food.’

The question is what is the meaning of the expression ‘fruit cup’ (Phala chamasa). In its literal sense it is not food. But in its technical sense it means a cup full of barley, rice, oil and green bean together with a cocoanut ; the word *phala* signifying cocoanut and the word *chamasa* denoting a cup containing eatable things in general, barley, rice &c.¹

Same word
must not
have several
senses.

(vi). The maxim :—Multiplicity of sense to the same word must not be attributed.

There is the text :—“The Aditya is the sacrificial post.” Here if the word ‘Aditya’ be taken to mean a post as well as the Sun, then two meanings are attributed to it. But if you take it as meaning ‘bright’ in this passage, then ‘brightness’ being a quality of the Sun, it would be only a *shakti* or *samartha* (force) of the same sense. Hence it should be taken here as meaning ‘bright.’²

1 अथ फल चमसाधिकरणम् । प्रोद्गादृषां फलचमसं द्रुतग्रेषु भक्ष्यं ददातीति श्रूयते प्रोद्गादृषामिति बहुवचनात् प्रोद्गादादीनां अस्त्रिजां सर्वेषामित्यर्थः । यवग्रीहिनिर्गन्तुं ह साधितचमसः श्रूयते ।

Adhikarana Kaumudi, para 6.

2 अथ अनेकार्थत्वात्कल्पना । आदित्यो वे यूपो भवतीत्यत्र आदित्यपदेन आदित्यवचं उच्यते ।

Adhikarana Kaumudi, para 50.

(vii). The Vyaktirachana maxim.

Where a general word occurs in connection with a particular proposition, the general word is to be understood to stand for an individual object proximately connected with the proposition. There is the text :—
 “Perform the *homa* (sacrifice) by the mantra called Agneyi.” Now there is a class of mantras called Agneyi. Which of these is to be used ? Any of them indifferently? The answer is that Agneyi mantra is to be used which is found in the proximity of the text referred to. Just as, when one says ‘call cook’, the meaning is to call the cook in his employ and not any cook.¹

General word
meaning an
individual
object.

(viii) The maxim called Vaiswadeva maxim.²
 “When two or more words have together acquired a symbolical meaning, they are to be taken in that symbolical meaning, and not in their natural meaning.”³

Symbolical
meaning in
preference
to natural
meaning.

(ix.) The maxim called the Prânabhr̥it maxim.⁴
 “The peculiar feature of one leading object belonging to a class may give name to the whole class.”

One object
of a class
gives name
to the whole
class.

Prânabhr̥it literally means feeling with life or inspiring life ; but the expression forms the commencement of a

1 अथ व्यक्तिरचनान्यायः । आग्नेय्या लुङीतीति श्रूयते.....सर्व्वेव शास्त्रा इति न सम्भवति.....सिद्धांतः व्यक्तिरचनानां सन्निहित विशेष परत्वात्.....पाचकादि शब्दाः पाचकशब्दः पाककर्तृत्वमात्रे प्रयुज्यते.....न तत्र प्रयोगः एवञ्चाग्नेयी पदमपि व्यक्तिमात्रवाचकं.....सन्निहितैव कृत् शास्त्रा ।

Adhikarana Kaumudi, para 41.

2 विश्वदेव न्यायः ।

3 वैश्वदेवादिशब्दानां नामधेयताधिकरणम् । Jaimini I. iv. 10.

4 प्राचभृत् न्याय ।

Mantra which is used in consecrating certain bricks. Hence the word has come to mean a kind of bricks.¹ This is the way in which the word Ajjyani also has come to mean another class of bricks.

Nanda Pandit in his Dattaka Mimânsâ refers to the Prâ nabhrit maxim to establish that, although the word 'substitute' was primarily applied only to six descriptions of sons, it acquired an extended, secondary sense, according to which it includes all the twelve descriptions of sons.

Figurative
sense.

(x) The maxim called the Pillar sacrificer.² 'Where a word would be unmeaning except in a figurative sense, it should be taken in the figurative sense.'³

Sense of a
vague word
to be gathered
from what
follows.

(xi) The maxim:—Where a word is left vague, its meaning should be made definite by reading it with what follows.'⁴

This is illustrated by the text: "He places besmeared pebbles of sand. Ghee is indeed light."⁵

Here 'besmeared with ghee' is to be read.

Class I. Group C.

(i) The Grahaikattva (single cup) maxim or the maxim regarding general clauses.⁶

1 प्राब्रह्मदादिशब्दानां सुव्यर्थत्वमधिकरणम् Jaimini I. iv. 17.

2 यजमानो यूपः ।

3 अथ यूपादिशब्दानां यजमानं सुव्यर्थाधिकरणम् ।

4 सन्दिग्धेषु वाक्यशेषात् ।

5 शर्करा चक्ता उपदध्यात् । तेजो हृतम् ।

Taittiriya Brâhmana, 3, 1, 2, 6, 12.

6 वहीकल न्यायः ।

'When a word is used in a text having the nature of a general clause (Uddeshya Vākya), the singular number includes the plural and the masculine gender includes the other two genders.'

Singular
number
includes
plural.

Although the word 'cup' is used in the singular number in the text 'He washes a cup,' it should be understood that all cups should be washed.

(ii) The Pashvaikatwa (single animal) maxim or the maxim regarding the number and gender of words which enter into an obligatory text.

Single
animal
maxim.

'A word occurring in an obligatory text (Vidhi Vākya) should be limited to the number, gender &c, which it grammatically bears in that text.' There is the text :—'By means of animals worship the Rudras'. Here the opposite side puts it— as the Rudras are many so there should be one animal offered for each Rudra. Jaimini decides "no, in the absence of anything to the contrary the number should be that indicated by the inflection.'

(iii) The duality of Habis maxim.

Where the rule laid down in the one case is to govern another case, it is of no consequence that some of the facts of the case in which the rule is stated are stated in the dual number, whereas the facts of the other case are in the singular number. There is the text :

Habis
maxim.

"The two *habis* (barley and rice) of which the *charu* is to consist are to be anointed by *ajya* (a particular kind of Ghee) in the primary Putreshti Yaga."¹

I अथ इविदभयत्वाधिकारणं पुत्रेष्ट्याग्ने शुतिः

त्रौहिभिर्यवेद्य प्राजापत्यं वृषक् यपयेत् ।

Adhikarana Kaumudi, para 8.

With regard to a secondary Putreshti Yaga it is said that the *charu* is to consist of barley. The rule of anointing the *habi* with *ajya* in the primary Yaga is to apply to the secondary Yaga. The question is : Is the propriety of such application affected by the fact that the *habi* in the one case consists of two things, whereas in the other of one thing only ? The answer is—no, because the difference is with regard to an incidental matter.

(iii) The Kapijjala (partridge) maxim.¹

Partridge
maxim.

In a clause providing for infliction of suffering on a creature, if the object of the infliction is expressed in the plural number, the number should be limited to the lowest numeral which would make a number. For instance, in the Sanskrit, when there is a plural number, not more than three should be taken. This maxim is quoted in the Dattaka Chandrikâ.

EXPLANATORY OBSERVATIONS ON MAXIMS RELATING TO THE INTERPRETATION OF WORDS.

Observations
on the
foregoing
maxims.

The maxims relating to the interpretation of words proceed from various points of view. Some of them supply special rules according as the word is an adjective or a substantive or a verb. Some of them are based on considerations as to whether the word is to be taken in its usual popular sense or in its etymological sense. And if it is to be accepted in a popular sense, whether that popular sense is to be the primary or the secondary phase of it. Again if it is to be taken in a secondary sense, whether that

I कपिज्जल न्यायः ।

secondary sense is a technical one, according to the peculiar nature of the subject-matter, or is a figurative or metaphorical sense. The maxims making the distinction between adjectives, substantives and verbs are peculiar to the Mimânsâ system of interpretation. Those named Sphâdi (the wooden sword) and the Aruni (the red-coloured, Nos. i and ii, Class I, Group B, relate to the distinction between adjectives, substantives and verbs. The substance of the wooden-sword maxim is, that where 'a word represents a thing which is to be used in connection with the action enjoined by an operative verb, the sense of the word representing the thing should be so taken as to suit the action enjoined. If it has several connotations the word should be taken connoting that quality only which is required by the exigencies of the action. To illustrate this maxim by a modern legal expression I will refer to the word 'Bench.' That word is used to mean a bench for the Judge to sit on, and from this sense it has come to mean a court; so its meaning is not confined to the peculiar form of the seat called bench, but will mean a suitable seat for the Judge which may be a chair. This maxim is inculcated by Sutra 11, Chap. I, Book III. The Sutra literally translated is:—

'Material things being associated with an originating (action) are (to be taken as prescribed to suit the purpose of that originating action'.¹

This broadly stated means, words which on the face of them purport to be subordinate to the principal word enjoining duty, are to be interpreted according

१ द्रव्यं चीत्पति संयोगात् तदर्थमेव चीदित । Jaimini III. i. 11.

to the sense of the principal word. The principle of this maxim is the same as is stated by Maxwell in opening chapter II of his Book :

"The words of a statute are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the Legislature has in view. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained. It is not because the words of a statute, or the words of any document, read in one sense will cover the case, that that is the right sense. Grammatically they may cover it ; but whenever a statute or document is to be construed, it must be construed not according to the mere ordinary general meaning of the words, but according to the ordinary meaning of the words as applied to the subject matter with regard to which they are used."

The name of the maxim is derived from the following text in which the first word is *spha* (sword).

'The sword, the potsherds, the sacrificial vessel called the Agnihotra Havâni &c., these ten are sacrificial weapons.'

The objector says that these words should be taken in their general popular sense, and should be indiscriminately applied according to that sense. The answer is—no. Each of the terms should be applied according to a particular requirement of the Yaga so as to suit it.

1 संशोभानुसारिण व्यस्तितलाधिकरणम् ।

Jaimini III. i. Adhi. 11.

So it appears, the word *Sphā* (a sword) is to be taken as meaning a wooden sword. For a Yâga requires only an instrument to push and not one to cut. The principal thing in the subject of the text is the performance of the Yâga. The mention of these ten weapons is a subordinate matter. Therefore, the words describing these weapons must be understood according to the scope of the subject matter.

The 'Red-coloured' maxim comes next for consideration. Jaimini's Sûtras are always methodical. Having dealt with the interpretation of subordinate words which signify objects or things, he goes on to discuss the question of interpretation of subordinate words which express qualities of things *i. e.*, which are adjectives. The maxim is :

'Qualifying words attached to the names of things which are the means to an action are simply descriptions of those things, and do not operate as conditions precedent to the action itself.'

The Sûtra literally translated runs as follows :

'Inasmuch as they have the same purpose, things and qualities thereof contribute to one and the same action as a matter of Niyama (arrangement).' The meaning is clearly this. Nouns are subordinate to the verb which constitutes the operative part of a text. Adjectives prefixed to such nouns cannot be separated from the nouns, so as to give them an independent character as constituting an essential condition for the performance of the duty. This is a very important maxim. Suppose in connection with a duty enjoined, objects and persons are incidentally mentioned, with a statement of the qualities

which those objects and persons should possess. In such a case if each of the qualities had the force of a Vidhi and formed an indispensable condition, then it would be simply impossible to perform the duty. For instance, in connection with the duty of marrying, Manu lays down that the bride should among other things have a name which is easily pronounceable, should have a gait like that of a swan, whose hair is gently flowing.¹ If these adjectives be taken as essential parts of the Vidhi for marrying, then in many cases marriage would be impossible. Therefore, the adjectives must be taken as mere matters of description as what is desirable and not as conditions precedent, affecting the question of validity of the marriage itself.

The maxim in question is to the same effect. It relates to the following text from the first word of which it has taken its name.

‘With a red-coloured, yellow-eyed, one year old cow *Soma* is to be bought.’²

The objector in effect says that in order to discharge the duty of buying *Soma*, you must not only make the purchase with a cow which is yellow-eyed and one year old, but that somehow or other you must give effect to the word ‘red-coloured.’ Is the ‘red coloured’ something else than the intended quality of the cow? The answer in the first place is, that the adjective does not relate to anything else than the identical

1 अव्यक्ताङ्गो सीत्यनाखी इ'सवा'सगामिनी ।

तनुबोमकेपदर्शना नृदाङ्गो मुहुरेत् स्त्रियं ॥ Manu iii. 10.

2 Cf. अरुचया पितृषाचौक दायव्यासीभं त्रीणाति इति ।

Jaimini III. i. 12.

cow which is yellow-eyed and one year old. This is the question to which the commentators mainly direct their attention. It is, however, of little importance to us. The important part of the maxim is, that the use of the adjectives is a mere Niyama and does not touch the question of the validity of the purchase. Kumarila Bhatta says, that the expression 'red coloured' has not the force of a Vidhi in it. The other maxims regarding the interpretation of words do not call for any explanation.

Generally, with regard to the interpretation of words, I may tell you here that according to the Mimāṃsā system, strictly speaking, the term Artha (meaning) implies that signification of a word which it possesses by itself and is not derived from the power of other words—*Ananyalabhya-shabdartha*.¹ Apadeva refers to this.² Thus according to the Mimāṃsakas the sense of words made out by the context, that is, by the Linga principle, is not strictly speaking its Artha but its Shakti (latent power). The sense of a word derived from the context (Linga) is usually called Lakshanâ-Artha. But as already indicated, even the Artha (meaning) of a word as contradistinguished from its power may be various—etymological, conventional, primary, secondary, technical, &c. This being the case, where the etymological and popular meaning of a word is identical and is its only meaning, there can be no

1 अनन्यलभ्यशब्दार्थः ।

2 स एव हि सर्वस्यार्थी यः प्रकारान्तरेण लभ्यते । अनन्यलभ्यशब्दार्थ इति व्यायात् ।

Mimansanyaya prakasha,

Jibananda's Ed. p. 17.

question raised as to its import, and the case becomes one of Sruti.

Section III. Maxims bearing on the Construction of Sentences and Texts.

Maxims of this class include those which relate to the principles of distinguishing between obligatory texts and non-obligatory or quasi-obligatory texts. These have been to a great extent discussed in Lecture III, in connection with the topic of the application of texts. Those maxims which specially relate to the interpretation of the Smṛiti law and usage law are also included in this class. These have been pretty fully dealt with in Lecture IV, which is specially devoted to the subject. Then again the maxims regarding negative Vidhis and conflicts of texts have been separately arranged as class III which will be the subject of the next Lecture. Leaving out these several groups of maxims regarding texts and sentences the rest may be sub-divided under the following groups.

Four Sub-
divisions of
Class II.

Group A. Maxims of strict construction of texts and sentences ; that is, those which are mainly of the nature of the Sruti construction.

Group B. Maxims of construction of texts and sentences by context ; that is, those which are chiefly of the character of Linga.

Group C. Maxims involving grammatical construction as relating to the Vakya principle.

Group D. Maxims of a somewhat free construction of texts and sentences ; that is, those which proceed more or less on the lines of Prakaraṇa principle.

Now I proceed to enumerate the maxims under each of the four Groups mentioned.

Class II. Group A.

(i) The Gārhapatya Nyaya or household-fire maxim.

This is the fundamental maxim of strict construction. It has already been explained before.

Strict
construction.

(ii) The Râtri satra maxim.¹

That construction is preferable which is nearer to the literal construction, even though by it you get only a non-obligatory text and not an obligatory one. There is the text :—"That one is to live perpetually is excessively contemplated in the night." Is this text to be interpreted as implying a Vidhi to the effect that one should pray in the night for having a perpetual bodily existence ? Says the objector it should be so interpreted. For, says he, the object in view is not really to have perpetual bodily existence but to get heavenly bliss by the maxim called the Vishwajit. The Sutra leading to the conclusion is :—"The object is indicated by the principle of proximity", which means that in applying a rule of presumption, that is to be presumed which is nearer in form to a Sruti. Now next to a Sruti is Arthavada and next to it is Anusanga and next to that is Linga. Therefore the passage is to be taken as an Arthavada expressing the desirability of a long life for performing religious sacrifices.

Preference
of literal
construction.

The above is the exposition of the maxim by Udeechya Bhattacharya. He has placed Anusanga

1 अथ गार्हपत्यधिकरणं । प्रतितिष्ठति इवे य एतावासीदपयन्तीति
ब्रूयते.....चिरजीविना भवन्तीति यावत् एतावासन्तोः प्रकृत्यात् अधिकार्ये
सपयन्तीति ।
Adhikarana Kaumudi, para 2.

above Linga although generally Anusanga is regarded as a part of the Vākya principle which is inferior to Linga. But the point of the maxim is that better to presume a passage to be an Arthavada than to be a Vidhi as implied either by Linga or Vākya.

(iii) The Prastara-praharana-Nyāya or the maxim of throwing grass into the fire.¹

Intelligible
sense mean-
ing.

This maxim lays down that words must be taken to mean what they express by vocabulary and grammatical inflection and not as mere stopgaps to complete a rhythm.

There is the text "Suktavakena parstaram praharati" (he throws the grass by Suktavaka). The objector says 'by Suktavaka' means by making an intonation of the measure of a Suktavaka. The conclusion is that the expression 'by Suktavaka' means by intelligently reciting Suktavaka and not by making a sound like that of the Suktavaka. This maxim in fact illustrates the axiom that every word must be taken to have an intelligible sense according to grammar and vocabulary.

(iv) The Rathakāra maxim.²

Text having
doubtful
point.

This maxim lays down that where there is a text on a doubtful point, we should stand upon the text and not indulge in speculative reasons, as in the case of the Rathakara being entitled to sacrifice, though he is of a mixed caste.

1 प्रस्तारप्रहरण न्यायः ।

Jaimini III. ii. Adhi ५.

2 रथकार न्यायः ।

Jaimini VI. i. Adhi 12.

(v) The Nishāda-sthapati Nyāya or the low caste priest maxim.¹

'When a compound word can be construed as a compound of an adjective and a noun (Karmadharaya), it should not be construed as a compound of two nouns (Tatpurusha); because the former combination is spontaneous while the latter is far-fetched'.

Low-caste
priest
maxim.

(vi) The Vaishwanara Nyāya² or the maxim that subordinates merge in the principal.

Subordinates
merge in the
principal.

'When a number of particular clauses collectively reproduce the purpose of a general clause, the particular clauses can not be taken to create separate obligations in addition to that of the general clause.'

(vii) The Arthavada maxim.

Arthavada
maxim.

There are clauses which are really parenthetical clauses in a Vidhi text forming a gloss thereof.

There is the text: "Sacrifice a white animal to Vayu, he is an angry god"³ Here the clause 'he is an angry god' is a parenthetical clause descriptive of the divinity.

Class II Group B.

(I) The Mantra-linga Nyāya⁴ or the maxim of implied Vidhis.

Maxim of
implied
Vidhis.

Passages of the nature of Mantra (addresses and hymns) by their suggestive power imply Vidhis and

1 निषादस्थपति न्यायः ।

Jaimini VI. i. 51.

2 वैश्वानर न्यायः ।

Jaimini I. iv. Adhi 11.

3 अथ अर्थवादादि करणं ।.....वायुर्वैश्वेदिष्टा देवता ।

Adhikarana Kaumudi, para 28.

4 मन्त्रलिङ्ग न्यायः ।

Jaimini I. ii. Adhi. 4.

are capable of being regarded as concomitants of the Vidhis implied by them.

(ii) The Saptadashâratni Nyâya¹ or the seventeen cubits pillar maxim.

When a statement of a subordinate character does not directly fit into the main obligation, in order to give it a useful meaning, it must be regarded as belonging to some incident of that obligation.

Nivita maxim.

(iii) The Nivita maxim² by which, of the statements in a series culminating in an injunction those which are only introductory to the injunction are to be treated as an Arthavada, as in the case of the Nivita text.

Individual virtue maxim.

(iv) The maxim that wearing gold ornaments and the like constitute Manushya Dharma (individual virtue).³

Mutually unconnected clause maxim.

(v) The Mitha-asambandha Nyâya or the mutually unconnected clauses maxim.⁴

'A subsidiary clause (Guna Vākya) is not (generally), to be taken as subsidiary to another subsidiary clause because both are equally subsidiary to the main purpose and are thus co-ordinates.'

Mutually connected clause maxim.

(vi) The Mithâsambandha otherwise called the Vārttraghni Nyâya or the mutually connected clauses maxim.⁵

'When from the context it appears that a subsidi-

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| 1 सप्तदशरत्नि न्यायः । | Jaimini III. i. Adhi. 9. |
| 2 निवीतस्यार्थशब्दाधिकरणं । | Jaimini III. iv. Adhi. 1. |
| 3 सुवर्णधारणादीनां पुरुषधर्मताधिकरणं । | Jaimini III. iv. Adhi. 8. |
| 4 मिथोऽसम्बन्धः न्यायः । | Jaimini III. i. Adhi. 12. |
| 5 वार्तघ्नी न्यायः । | Jaimini III. i. Adhi. 13. |

ary clause (Guna Vakya) is reciprocally connected with a particular subsidiary injunction (Guna Vidhi), it is to be taken as restricted to that subsidiary injunction.'

(vii) The Mushtikaranâdi Nyâya or the maxim¹ of 'closing the fist &c.'

Closing the fist maxim.

'Where there are two or more subordinate clauses, one after the other, embodying conditions for the performance of an action elsewhere stated, these clauses are not to be read as successively qualifying each other, but as co-ordinate sub clauses, both equally bearing upon the action to which they relate.'

(viii) The Suktavâka maxim.²

Suktavaka maxim.

'When a complex text consisting of parts indiscriminately refers to two cases, so much of the complex text as is applicable to the one case should be applied to that case, and so much of it as is applicable to the other should be applied to that other.'

(ix) The Angângi Nyaya³ or the maxim of the subordinate and the principal.

The principal and subordinate maxim.

'Where there is an isolated passage which is not complete, and requires to be attached to something else, it must be read into the texts regarding the intended main object.

(x) The maxim of the Incidental⁴ ; that is to say

Maxim of the Incidental.

1 मुष्टीकरणादीनां कृत्य पाकरणिक्काङ्क्षाधिकरण'.

Jaimini III. i. Adhi. 14.

2 सूक्तवाक न्यायः ।

Jaimini III. ii. Adhi. 6.

3 अङ्गाङ्गि न्यायः ।

Jaimini II. ii. Adhi. 3.

4 प्रतिपत्तिकर्म न्यायः ।

Jaimini IV. ii. Adhi. 4.

the incidental is that which is of no eventual use though comprised in a transaction.

The text is : 'The whole animal is to be offered, but only the flesh is to be used for worship throwing off the blood and the intestine.' Here blood and intestine can not be altogether avoided, though not required. They are Pratipatti (incidental). Thus if a Mimāṃsaka were present when the lady lawyer in the Merchant of Venice insisted on 'not a drop of Christian blood but a pound of flesh only' the Mimāṃsaka would have met her by this maxim which made the shedding of blood incidentally necessary.

Stepping
forward
maxim.

(xi) The Abhikramanâdi Nyâya¹ or the stepping forward maxim.

'A clause describing the manner in which an obligatory act is to be commenced, is not to be taken as optional, but as forming part of the obligatory act.'

Whey
maxim.

(xii) The Amikshâ Nyâya or the whey maxim.²

'An act which is described merely as incidentally following an obligatory act, is not an obligatory act, as in the case of the Amiksha text.'

Class II Group C.

Complex
sentence
maxim.

(i) The Ekavakyatâ Nyâya³ or complex sentence maxim.

'A complete sense makes a complete sentence, and where it is divided into two clauses, such clauses are interdependent upon each other.'

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| 1 अमिक्रमश्चादि न्यायः । | Jaimini III. i. Adhi. 10. |
| 2 अमिक्षा न्यायः । | Jaimini IV. i. Adhi. 8. |
| 3 एकवाक्यता न्यायः । | Jaimini II. i. Adhi. 14. |

- (ii) The Vākyaabheda Nyāya¹ or the disintegration of sentences maxim. Disintegration of sentences maxim.
 'When the sentences are parallel and co-ordinate, they should not be read into each other.'
- (iii) The Anusanga Nyāya² or the ellipsis maxim. Ellipsis maxim.
 'Where there is a number of incomplete clauses, followed by one which is completed by a finite verb, this last should be read at the end of each of the other clauses to make them complete.'
- (iv) The Angāpurvabheda Nyāya³ or the maxim that a separate limb of a Vidhi has a separate sanction.
 'Where there is a number of clauses, each of which is in the nature of a subordinate Vidhi clause, each of them should be construed as having separately the transcendental sanction.'
- (v) The Tadadi-utkarsha Nyāya⁴ or take it forward maxim. Take it forward maxim.
 'Where a preceding clause is wanting in something, and that thing is indicated in a following passage, the thing indicated may be read into the former clause by way of anticipation.'
- (vi) The Tad-apakarsha Nyāya⁵ or take it backward maxim. Take it backward maxim.
 'When the reverse is the case, the reverse process should be adopted.'

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| 1 वाक्यभेद न्यायः । | Jaimini II. i. Adhi. 15. |
| 2 अनुषङ्ग न्यायः । | Jaimini II. i. Adhi. 16. |
| 3 अङ्गापूर्वभेद न्यायः । | Jaimini II. ii. Adhi. 1. |
| 4 तदादुत्कर्ष न्यायः । | Adhikarana Kaumudi. |
| 5 तदपकर्ष न्यायः । | Do. |

Sacred thread
maxim.

(vii) The Upavita Nyāya or the sacred thread maxim.¹

‘When, between two descriptive clauses, a finite verbal clause intervenes, they are to be regarded as separate propositions, when there would be doubt as to there being an identical proposition as in the case of the Upavita text.’

(viii) The Isau-shyenyavishesha-dharmātidesha Nyāya or the maxim that references for details are proper between what are equal and similar.²

(ix) The Maitravaruna maxim.³

Maitravaruna
maxim.

‘When an act is to be done and not assumed as done as in the case of handing over the staff to Maitravaruna priest it is in the nature of an enjoined act and not merely a recited act retrospectively considered.’

Class II Group D.

Black-bean
maxim.

(i) The Krishnala Nyāya⁴ or the black bean maxim.

‘When, by reference, what is contained in one text is to be transferred to the subject matter of another text, the whole of the former text should not be bodily transferred, but such portions only as are not inconsistent with the latter text.’

(ii) The Kshâmeshti Nyāya⁵ or the burnt offering maxim.

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| 1 उपवीत न्यायः । | Jaimini III. i. Adhi. 11. |
| 2 ईषीमीनीयविशेष धर्मातिदेशाधिकरणम् । | Jaimini VII. i. Adhi. 2. |
| 3 मैत्रावरुण न्यायः । | Jaimini IV. ii. Adhi. 6. |
| 4 कृष्ण न्यायः । | Jaimini X. ii. Adhi. 2. |
| 5 क्षामेष्टि न्यायः । | Jaimini VI. iv. Adhi. 5. |

‘When a rule, in prescribing the mode in which an act should be done, enjoins that a certain quality should be thoroughly secured, it should be taken only to mean the securing of such a degree of thoroughness as can be reasonably expected.’

Burnt-offering maxim.

(iii) The Swara chip of wood) maxim¹.

Chip of wood maxim.

‘When one construction would secure a convenience and economy, and another would impose labour and fruitless trouble, the former is the proper construction.’

(iv) The Samanasyât maxim.

‘Where one thing is given to more than one person it must be equally divided among them in the absence of any direction to the contrary.’

There is the text: “In the ceremony of the exhibition of gold, let horses be given to the Udgatri, Prostotri, and Pratitotri.” Such being the direction the horses are to be equally divided among them as the Sruti approves of equal division.

(v) The Kaimutika maxim².

Kaimutika maxim.

‘Rhetorical flourishes, meant to indicate that what applies to a remote case, *a fortiori* applies to a case close at hand, should not be literally understood.’

Class II Group E.

(i) The Anritavâda maxim³ or the maxim that the prohibition of speaking untruth is positive law.

Prohibition of speaking untruth.

‘The text, by which speaking falsehood is prohibited,

1 स्वरीम्हेदनाय प्रयोजकताधिकरणम् । Jaimini IV. ii. 1-6.

2 कैमुतिक न्यायः । Jaimini I. i. 32.

3 अदृत वदन भविष्य क्रतुधर्मताधिकरणम् । Jaimini III. iv. Adhi. 4.

though seemingly, it is merely the recital of a moral law, should be read as a positive injunction.'

(ii) The maxim of the absolute character of the three debts.'

Three debts
maxim.

'A text, which declares that a Brâhmin has the three fold duty of sacrifice, learning and maintaining the household, must be understood to enjoin those duties absolutely, and as belonging to all the three castes.'

(iii) The Udbhida and Chitrâ maxim².

Chitra
maxim.

'When a text only indicates the performance of a ceremonial act under a certain name, but there is no text forthcoming enjoining the act and there is no sanction, it is to be read only as a text of nomenclature.'

(iv) The Tad Vyâpadesha Nyâya³ or the simile maxim.

Simile
maxim.

'When a text, if literally construed, would be subversive of the main purpose (Pradhâna Chodanâ), and when it is possible to construe it as a description or name, it should be so construed.'

Explanatory
observations
on the fore-
going
maxims.

EXPLANATIONS OF THE IMPORTANT MAXIMS OF CLASS

II. viz., THE CLASS REGARDING THE INTER- PRETATION OF TEXTS AND SENTENCES.

The interpretation of texts and sentences is conducted from various points of view. It may be with a view to prevent interference with the literal meaning

1 अथर्वश्रुति निरुक्ता अविश्वरूपम् ।

Jaimini VI. ii. Adhi. 11.

2 चित्रया यज्ञेन व्यायः ।

Jaimini I. iv. Adhi. 2.

3 तत्त्वपदं व्यायः ।

Jaimini I. iv. 5.

of a text. It may be for the determination of the meaning of a text where it is doubtful. In some cases it is for the purpose of settling whether a clause is to be taken as a complete simple sentence or it should be read together with another clause. In some cases it is necessary to distinguish between a reciting clause and an operative clause and also to distinguish between a subordinate clause and the principal clause. Again there are maxims based on the recognition of the difference between the direct, primary law (Sruti) and the derived common law (Smriti). These and the like are the various points of view from which the maxims regarding the interpretation of texts proceed.

Class II. Group A.

The maxims of this group are all more or less directed to prevent interference with literal construction so far as such construction is possible. Out of this group I shall make a few explanatory remarks only as regards maxims, v. vi. and vii.

The Nishadasthapati maxim has reference to the interpretation of the clause 'Nishadasthapati.' The question is, does it mean 'Nishada' who was 'Sthapati' or 'Sthapati' of the 'Nishada'? The word Sthapati meaning a *priest* and Nishada meaning a *chandal*. The first construction is adopted as being the simpler of the two. I shall have occasion hereafter to show how Nilakantha relies on this maxim to support the right of a Sudra to perform or rather to get performed the Putreshti Yāga.

The principle of the Arthavada maxim has been more than once explained. Here I shall give some

explanations of it from writers on the Vyavahara law. Medhâtithi, in his commentary on Sloka 3, chapter II. of Manu, explains that the word Vidhâna (provisions of law) used in that Sloka does not include Arthavâdas which merely confirm what has already been established and do not contain a direction for doing it.¹ Kulluka Bhatta also in his commentary on Sloka 6, chapter II. of Manu, explains that an Arthavâda tends to establish duties by containing praises which are to be read as a part of a Vidhi proposition.²

The nature of Arthavâda may also, probably be well understood, if you consider certain texts of the Jimutavâhana on the subject of the right of inheritance. In the Dâyabhaga, the right to inheritance, in many instances, is supported by Jimutavâhana, by the reason that the person offers funeral oblations to the deceased. Take for instance, the case of the paternal grandfather including his daughter's son.³ Jimutavâhana says :

"The succession of grandfather's and great grandfather's lineal descendants including the daughter's son, must be understood in a similar manner, according to the proximity of the funeral offering : since the reason stated in the text 'for even the son of a daughter delivers him in the next world, like the son of a son,' is equally applicable, and his father's or grandfather's daughter's son, like his own daughter's son, transports his manes

1 अर्थवादानाम् हि सिद्धरूपोऽर्थो नहि तदर्थस्य कर्तव्यता प्रतीयते ।

2 अर्थवादानामपि विधेयकवाक्यतया सावकत्वेन धर्मः प्रामाण्यात् ।

3 See Colebrooke's Dâyabhaga 9, 10, sec. vi, Chap. XI. p. 215.

over the abyss, by offering oblations of which he may partake."

Here, in this paragraph you find that the Vidhi, regarding the succession of the persons in question, is laid down by the first part of the passage. Then in the remaining part he states an argument in support of the Vidhi. This is only an Arthavâda. Therefore even if a lineal descendant of the paternal grandfather has not performed the funeral oblations, he is not precluded from the inheritance. This is a practical application of the Arthavâda maxim.

I should tell you here that an Arthavâda sentence may not necessarily be found in juxtaposition with the Vidhi text to which it corresponds. A text may be an Arthavâda by Prakarana; that is, it may be connected with some Vidhi somewhere else stated. In the Nivita Adhikarana, which I have explained to you in the third lecture, Jaimini holds that the text there is an Arthavâda by Prakarana. So much for the Arthavâda maxim.

The Vaishvânara maxim which lays down that *clauses forming parts of a whole Vidhi proposition are not to be each separately reckoned as an independent Vidhi*. This is explained by Jaimini by referring to the following Vedic texts :

"He obtains children. He ought to prepare a cake called Vaishvânara baked on twelve potsherds. A cake baked on eight potsherds purifies, by means of the Gâyatri metre and of Brahma Varchasa, the child if it be a son." "A cake baked on nine potsherds places in him (the son) light by means of the musical metre called Trivrit. A cake baked on ten potsherds grants him

(literally places in him) food by means of the Virât metre. A cake baked on eleven potsherds puts in him spirit (in the original Indriya) by means of the Trishtubh metre. A cake baked on twelve potsherds grants him (literally places in him) cattle by means of the Gâyatri metre. When a son is born, a pure man performs this sacrifice."¹

You see that this passage begins with a clause requiring cakes to be prepared on twelve potsherds and ends with a like clause. The intermediate clauses merely show the result of using 8, 9, 10 and 11 potsherds respectively. These statements are not to be taken each as a separate Vidhi, but merely as explaining the use of the twelve potsherds and the importance of them, twelve being the number enjoined. In our Penal Code we have the provision that when a man is found guilty of an offence which consists of several parts, each of which itself is an offence, the man is to be punished for the principal offence only. The maxim in question, roughly speaking, corresponds to this principle of our modern law.

Class II. Group B.

Maxims i and ii of this group have little or no bearing on the Smṛiti law. Therefore they require no comment. The Nivita maxim as well as that regarding the wearing of golden ornaments have already been explained in the third lecture ; so I proceed to explain to you the Mitha Asambandha maxim otherwise called

¹ Taittiriya Samhita (II. 2. 5) cited in I. IV. 17 (Kunte's Edition).

the Baikankata Vârana maxim, that is, by which the principle of general clauses is laid down. The Sutra on the subject runs as follows :

“(General) subordinate clauses all relate to the ultimate purpose (of the Vedas), and as such one of them is not related to another, being co-ordinates.”¹

Savara Swâmi shortly explains this maxim thus. He refers to the two matters Agnyâdhâna and Pavamâna, the former establishing the sacred fire and the latter being an offering to subserve the sacred fire. The latter is not subordinate to the former. They are both of use in the Darsa-paurnamâsi Yâga and in other Yâgas as well. The name of the maxim is taken from the following text :

“Vessels made of the wood of the tree Vârana and of the Baikankata are declared as fit to serve the purpose of sacrifices. But the Vârana is not to be used for making Homa, the Baikankata vessel is to be used in making Homa. Therefore the Vârana vessel is to be used generally in Yâgas except in ceremonies with Homa, and the Baikankata vessel also generally in ceremonies with Homa.”²

In applying this text one is to remember, that both the directions, regarding the use of the Vârana wood and the Baikankata wood, are in the nature of general

1 गुह्यानाम् परार्थचादसम्बन्धः समत्वात् स्यात् । Jaimini III. i. 22.

2 अग्न्याधेये वारण्य वैकङ्कतपात्राणि अहोमार्थानि होमार्थानि च श्रूयन्ते, तस्मात् वारण्यं वे यज्ञावचरः स्यात्, न त्वेतेन जुहुयात्, वैकङ्कती यज्ञावचरः स्यात् जुहुयादितेन इति । न च वारण्यवैकङ्कतानां पात्राणां अग्न्याधेयेन सम्बन्धः ।

Savara Bhashya on Jaimini III. i. 22.

clauses. One of them does not stand in a subordinate relation to the other. But each of them is to be applied according to circumstances. The Baikankata vessel being suitable to Yâgas with Homa, is to be applied to such Yâgas ; and the Vârana vessel being unsuited to such yâgas, is not to be applied to them. But, if one were subordinate to the other, both of them would go together. Jimutavâhana utilizes this principle in paragraph 70 Chapter 2, Colebrooke's edition. In fact, there being many *Gunavâdas* in a particular *Shâstra* it is necessary to settle which of them go together and which of them are separable from each other.

The next maxim called the *Mithasambandha* maxim (also called the *Vartraghni* maxim) is one of a converse character. This maxim is connected with the following text : —

“They recite the *Vartraghni* verses on the full-moon day, and the *Vridhanvati* verses on the new-moon day. In this text, the subordinate matters *Vartraghni* and *Vridhanvati* are linked together, so that one must precede and another follow, in course of the performance of the Darsa-paurnamasi Yâga. This being so, they are connected with each other and are both related to each other. The Sutra says, ‘subordinate matters are connected with each other, when they do not relate to the general purpose.’¹ Thus, these two maxims, between them, explain when two given *Gunavâdas* (subordinate statements) go together and when they do not.

Skipping over the Mushti-karanadi, Suktavâka and the Angângi maxims and the maxim of the Incidental which speak for themselves, next comes the Abhikramanâdi maxim.¹ It has been made amply clear that a statement occurring in a complex Vidhi text which is separable from the operative clause, and which is merely of the nature of a gloss upon it, is an Arthavâda. But every statement occurring in a Vidhi text, in addition to the terms conveying the injunction, does not fall under this category. There may be a statement in a Vidhi text inseparably connected with the injunctive part of it ; such a statement must be regarded as a part and parcel of the Vidhi. This is the principle laid down by the Abhikramanâdi maxim. The substance of which is as follows :—

‘A clause describing the manner in which an obligatory act is to be commenced, is not to be taken as optional, but as forming a part of the obligatory act.’

The maxim takes its name from the text : “He, going forward offers oblation by means of the conquest ceremony.”²

With regard to this text the objector suggests that, the act of ‘stepping forward’ should be read separately from the operative words of the Prayâjya (sub-ceremony) ; but it is decided that it can not be so separated, but that it must be read as a part of the cere-

1 अभिक्रमवादीनां प्रवाजनावाक्याधिकरणम् ।

Jaimini III. i. Adhi. 10.

2 अभिक्रामं कुर्वीत्यभिजित्वा इति ।

Savara Bhashya on Jaimini III. i. 19.

mony. To illustrate this principle with regard to the Smṛiti law, I may take the case of the ceremony of the *Putreshti Yaga* in connection with the act of adoption. The *Putreshti Yâga* is mentioned in connection with the act of adoption. Can the act of adoption be validly performed without a *Putreshti Yaga*? In other words, is *Putreshti Yaga* separable from the act of adoption, and is the statement regarding it liable to be taken as an *Arthavâda*? Applying the above maxim to the case the answer is, that one can not be separated from the other, and they jointly constitute one *Vidhi*. The Privy council has decided that the performance of the *Yaga* is not necessary in cases of adoption by *Sudras*. That, no doubt, is correct in the view that *Sudras* are incapacitated from performing a *Yâga*.

You have seen that the *Hetuvadnigada* maxim and the *Bidhibadnigada* maxim lay down the principle that statements in the nature of reason and collateral statements are non obligatory. There is another class of statements which expresses incidental sequences. These also have not the force of a *Vidhi*. This is laid down by the *Amiksha* maxim, the substance of which may be stated as follows :—

‘An act which is described merely as incidentally following an obligatory act, is not an obligatory act.’ It has reference to the following text :

‘Bring curds and introduce into it hot milk, it is the *Amikshâ*-dish to be offered to the *Vaishwadevas*. The whey is to be disposed of in other ways.’¹

1 तस्मै पयसि दध्नामयनस्यामिक्षा प्रयुक्ताधिकरणम् ।

Jaimini IV. i. Adhi. 8.

With reference to this text the objector argues, that as by the same act of mixing curds with hot milk (Amiksha) the solid formations and (the Vajina) the watery fluids are formed, both must be equally regarded as sacrificial materials. The author answers that as the whey is formed only incidentally, the Amiksha (solidified milk) is the principal. This involves the important principle that what is stated as an incidental sequence is not to be regarded as an essential part of a *Vidhi* text. This principle has been referred to by writers on the law of Adoption in connection with the details of that law. You will thus see how the Mimânsâ writers make nice distinctions between statements of subordinate matters and of matters which are essential. The former are called *Gunavâdas* which are included in *Arthavâdas*. Later Brahminical writers are often found disposed to ignore the distinctions. Their tendency is to take every thing occurring in the *Shastras* as essentially obligatory. The effect of this has been that in regard to the rights of two important classes of persons namely, women and Sudras, many mischievous results have been worked out. There are many texts regarding women to their disparagement which are merely of the nature of *Gunavadas*. So also, with regard to the Sudras. There is no reason for raising these texts to the rank of *Vidhis*, yet this is what has been done. But, as usage is an important factor of law, perhaps it is too late to try to undo the mischievous effects which have been produced on the law of the country in the above manner. As regards women, the actual law, as laid down by Manu and Jaimini, in no way, makes their

status inferior to that of men. The two most important characters of a woman, are that of the wife and that of the daughter. In both these characters, the positive rules of law, in no way, compromise their position. Yet by following usage, later writers have laid it down that women have no rights unless recognised by express texts.

As regards Sudras also I have shown to you that according to Jaimini's principles of interpretation, a Sudra's right to perform sacrifices are taken to be restricted by express texts. In fact, in cases of both, the onus has been wrongly shifted. According to a proper interpretation of the texts of the *Shastras*, the rights of these two classes of persons are general and can only be curtailed by express texts. But, it has been assumed that they have no rights unless given by express texts. This has been done by raising subordinate matters which are mentioned in the way of *Gunavadas* to the rank of *Vidhis*.

Class II. Group C.

The principal maxims under this head are the Ekavâkyatâ maxim and its converse the Vâkyabheda maxim. Both of these have been explained before. These two maxims form the basis of syntactical construction.

Generally speaking, construction with regard to syntactical connections derives its importance from the absence of the system of punctuation in the Sanskrit, which obtains in modern languages. No doubt the elaborate inflections (*Vibhakti*) of the

Sanskrit grammar and the numerous recognized forms of combinations, known as Samashas, obviate to a great extent the necessity of punctuation. But these grammatical developments are subsequent to the Vedic era to which the Brahmanas, which are usually the subject of interpretation, belong. Further difficulties in settling syntactical connection arise from the fact that in the old Brahmanic literature, the connecting links are either missing or are of an indefinite kind. In the Smṛiti literature these difficulties are not so abundant as in the Brahmanas, but they exist more or less. In this connection one fact ought to be noticed. It is that in many respects the idiom of our present vernaculars is more akin to the idiom of the language of the Upanishadas than to the pure Sanskrit. Thus the difficulty of the syntactical construction of the Brahmana texts, often resembles that felt in construing old Bengalee documents. However having already explained to you before the Ekavâkyata maxim and the Vakyabheda maxim, here I shall only say a few words regarding the Anusanga maxim, the Tadutkarsha, the Tadapakarsha, the Upavita and the Maitra Varuna maxims.

The Anusanga maxim is illustrated by Jimutavâhana in his discussion on the following text of Manu.

“It is admitted, that of a woman married by the ceremonies called Brâhma, Daiva, Arsha, Gandharba and Prâjâpatya, the property shall go to her husband, if she die without issue. But her wealth, given to her on her marriage in the form called Ashura or either of the other two (Râkshasa and Paisâcha),

is ordained, on her death without issue, to become the property of her mother and of her father."¹

In the above text you find in the second sentence the words 'wealth given to her' before the words "on her marriage in the form etc." Jimutavâhana says that these words "wealth given to her etc." should also be inserted in the first part of the sentence after the word "the property" by the principle of Anusanga. Thus the Anusanga means, that an expression occurring in a subsequent clause is often meant also for the clauses preceding it; and that it is only for economy that it is expressly mentioned in the last clause only.

The illustration given in the Adhikarana consists of the following texts :

"Oh Agni ! I offer my sacrifice to thee. I overcome (my) harsh tongue, I overcome my vexatious tongue, by the body latent in iron, latent in silver, latent in gold—(thy body oldest and lying in a cave)".² The passage with its ellipses filled up would stand thus :

"Oh Agni ! (it is by thy body) which (is) latent in iron (and) Oh Agni ! (it is by this body) which (is)

1. Colebrooke's Daybhaga P. 87.

Cf. Manu IX, 196, 197 also.

ब्राह्मदेवार्चं गन्धर्वं प्राजापत्येषु यदसु ।

अप्रजायामतीतायां भर्तुर्वे तदिष्यते ॥

यत्त्वस्याः स्याद्वनं दत्तं विवाहे दामुरादिषु

अप्रजायामतीतायां माता पित्रोस्तदिष्यते ।

2 यति अये या ४या रत्नासया ४रामया तनूवर्षष्टा गह्वरेष्टो वषो अपावधी त्वं वषो अपावधीत् स्वाहा ।

latent in silver, and Oh Agni ! (it is by thy body) which is latent in gold—(it is by thy body) oldest and lying in a cave that I overcome (my) harsh tongue, I overcome my) vexatious tongue."

Then, as regards *Tadutkarsha* and *Tadapakarsha* maxims, they are in fact particular cases of the *Anusanga* maxim. If a clause which occurs in a subsequent sentence is to be read over again in a previous sentence, then this is a case of *Tadapakarsha* maxim. But when the vice-versa is the case it is called *Tadutkarsha*. Sometimes by these maxims a sentence is bodily transferred from one place to another. It is either taken backward from where it occurs or forward. This, however, is not generally allowable. It is permitted only in exceptional cases. In Sutra 24, Chap. II, Book I, Jaimini distinctly deprecates *tadapakarsha* (transference backward), where it is possible to avoid it by taking a clause to be a *Prakarana*.¹

The *Apakarsha* and the *Utkarsha* principles are not confined to transferring clauses backward and forward, they are also used in adjusting the time of application of texts by shifting the time backward and forward, when two texts happen to point to the same time for their application. For instance *Udichya Bhattacharjea* in his *Adhikarana Kaumudi* gives the following cases.

"There is one text," he says, "enjoining the performance of Homa just at the moment the sun rises. There is another text enjoining that one should bathe just at

१ प्रकरणे सम्भवन् अपकरणौ न कस्योक्त, विधानार्थकं हि तं प्रति ।

that moment." This being so, the bathing should be shifted to before the rising of the sun by Aparsha, and the Homa should be performed at its time. Then he gives a similar case of Utkarsha. He says "The Sapinda Sraddha is to be performed in the afternoon and then the annual Sraddha. But the time appointed for the annual Sraddha may fall at noon. When this is so the annual Sraddha must be shifted forward by Utkarsha."

I next take up the Upavita maxim. This is a maxim relating purely to syntax. The text which illustrates it, is summarised as follows :

In the Prakarana of the Darsha-paurnamasi Yâga in the 7th and 8th Anuvaka there is a description of the subordinate Yâga named Samidhini. In the 9th Anuvaka there is a description of the Nivita ceremony preceded by some injunctions. In the 10th there is some matter connected with the subordinate Samidhini ceremony. In the 11th there is the injunction about the Upavita. Now the question is a nice one. It is this. Is the Upavita ceremony a sub-prakarana of the Darsh-paurnamasi through the subordinate Samidhini ceremony or it is a direct Prakarana of the Darsha-paurnamasi Yâga ? The question is not without doubt. Because Samidhini is mentioned in the 7th and 8th as well as in the 10th Anuvaka. But between the 8th and 10th, there is the 9th, which has nothing to do with the Samidhini. There being this interruption, the Upavita ceremony must be taken to be a direct Prakarana of the Darsh-paurnamasi and not as a sub-prakarana of it as a part of the Samidhini.

The Maitravaruna maxim which I shall refer to,

is more important than the above. This maxim proceeds upon certain texts which need not be reproduced here. It is sufficient to say that the controversy is whether the text, 'he gives the staff to the Maitravaruna priest' is a proposition which contemplates by its context a purpose as already fulfilled, or a purpose to be fulfilled. The answer is that it is the latter, and therefore indicates a duty to be done (Arthakarma) and does not merely indicate the finishing of some duty. You will see how Nilakantha in his Vyavahara Mayukha relies upon this maxim in his discussion regarding the question of the eligibility of daughter's and sister's son for adoption.

Class II. Groups D and E.

Maxims of group D tolerating a somewhat free construction with advertance to considerations of necessity or expediency or convenience are only a few and are not very important. Those of group E which are of an especial character being guided by considerations of social benefit and religious purity, have been already discussed in other places, so these require no explanatory remarks.

LECTURE VI.

MAXIMS RELATING TO NEGATIVE RULES AND CASES OF CONFLICT AND ALSO CERTAIN MISCELLANEOUS MAXIMS.

Having arranged the Mimansa maxims into four classes viz.

Class I. Those relating to the interpretation of words ;

Class II. Those relating to the interpretation of texts or sentences ;

Class III. Those relating to the negative rules or conflict of texts.

Class IV. Certain miscellaneous maxims ;

I have discussed certain maxims of class I. and class II. in the preceding lecture. In this lecture I shall deal with maxims of class III. and class IV.

Section I. Maxims regarding negative rules and conflict of texts.

I have touched the subject of conflict once in dealing with the axioms, and again, in connection with the subject of Badha (bar). But this subject, together with the allied subject of negative rules, requires full and careful consideration, as the Mimânsâ writers attach great importance to them. So, before entering on an examination of the maxims enunciated on the subject, it is desirable to explain to you the general

Preliminary
discussion
on the
subject.

lines on which the Mimāṃsā writers proceed in dealing with these topics.

The Mimāṃsakas examine the subject of negative Vidhis very searchingly and exhaustively. First of all, they distinguish between what may be called prohibitions against all the, world and those against particular persons. This distinction resembles that between judgments or rights *in rem* and judgments or rights *in personam*. The former prohibitions are called Pratishedha and the latter Paryudasa. For example, the prohibitory clause 'Do not eat fermented food' is a Pratishedha ; while the prohibition 'those who have taken the Prajapati vow must not see the rising sun' is a Paryudasa. In the second place, Pratishedhas are divided practically into two sub-classes *viz.*, those which prohibit a thing without any reference to the manner in which it may be used, and those which prohibit it only as regards a particular mode of using it. For instance, 'Do not eat fermented food' prohibits the use of it under all circumstances, while 'Do not use the Sorasi vessel at dead of night' forbids the use of the vessel only at the dead of night.

Then Paryudasa is also of two kinds. In one case, it relates to a person performing some specified act which is not enjoined by a Vidhi, as in the case of the Prajapati vow. In the other, it relates to a person engaged in performing a Vidhi ; as for instance, when one is to do Sradh during the full moon by virtue of a Vidhi but not in the night of the full moon. In this case, the prohibition of doing Sradh in the night is a Paryudasa, which is the same as an exception or

proviso as we understand these terms. For, the clause 'not in the night' is an exception to the rule 'Perform the Sradh during the full moon'. These are the four classes of negative clauses. The first class, of which the Kalanja (fermented food) clause is an example, may well be called a condemnatory prohibition. The second class consists also of absolute prohibitions of things under certain circumstances, as in the case of the Sorasi vessel. The third class consists of prohibitions in relation to persons in a given situation, as in the case of Prajapati vow. The fourth class restricts the scope of action of persons engaged in fulfilling an injunction, as regards the time, place or manner of carrying out the substantive element of the injunction.

If you do not keep in mind the above distinctions you will never be able to follow the Mimânsâ writings. It should be noted that the second and the fourth classes are usually met with in the Vyavahara law, and the first and the third in the Vedic law. In fact, the first class of Pratishedhas are moral prohibitions condemning acts which are sinful ; and the third class which are Paryudasas in the nature of religious vows, are also rules affecting religious discipline. These, therefore, are appropriate in the Vedic and the ecclesiastical laws. The remaining two classes *viz.*, the second class of Pratishedhas and Paryudasas comprised in the fourth class appropriately occur in the Vyavahara law.

Again, in the domain of the Vyavahara law, the Smriti writers introduce the question of equity as against the strict letters of the Smriti law. The question, thus introduced, opens a new field of considerations regarding

conflict. I have shortly explained before, in connection with Uha Vichara, how the Smriti writers introduce the question of equity. The term *artha* is used in matters of litigation in the sense of relief sought. Thus we have the words *arthi* and *pratyarthi* (plaintiff and defendant). Thus the expression Artha Shastra means the rules of equitable relief. The Smriti writers formulate certain propositions as regards conflict between Smriti texts and Artha Shastra (equitable principles).

The subject of conflict contains considerations of conflict between one spiritual rule and another ; of conflict of one Vyavahara Vidhi (civil law rule) and another ; and of conflict between the Vyavahara Smriti texts and equitable principles (Artha Shastra).

Allied to the subject of conflict there are the following topics which I include in Class III.

(1) The application of alternative texts when the alternative events occur simultaneously or one after the other.

(2) The adjustment of two positive Vidhis, one of a general character and the other particular.

With these preliminary remarks I would lead you to the maxims regarding negative rules and conflicts and the allied topics.

This class of maxims may be divided into following groups :—

Group A. Maxims regarding Pratishedha or prohibition proper.

Group B. Maxims regarding Paryudasa or exceptional and qualified prohibitions and the like.

Four divisions of the negative rules and conflict of texts.

Group C. Maxims relating to alternative clauses and the adjustment of general and particular Vidhis.

Group D. Maxims relating to the equitable application of Smṛiti texts.

Class III. Group A.

Maxims regarding Pratishedha or prohibition proper.

Four maxims
regarding
Pratishedha.

(i) The Kalanja maxim.

"A general condemnatory text is to be understood not only as prohibiting an act, but also the tendency, including the intention and attempt to do it."¹

(ii) The Shorasi-cup maxim.

"Where one and the same thing is once enjoined and then prohibited, this is a case of direct conflict, and accordingly not reconcilable."²

(iii) The Dvayo-pranayanti maxim.

"The same text should not be once taken as a case of Paryudasa (mere exception), and again as a case of Pratishedha (prohibition proper)."³

(iv) The Pratishiddhva-dravya maxim.

"That which is forbidden by a general condemnatory Vidhi cannot be used in any shape, for instance, even as a substitute for another thing."⁴

1 प्रतिषिद्ध कर्षणामनुष्ठानेऽनिष्टापाताधिकरणम् ।

Jaimini VI. ii. Adhi 5.

2 नातिरात्रे मृग्राति षोडशिनमित्यादिनिषेधस्य विकल्पपताधिकरणम् ।

Jaimini X. viii. Adhi 3.

3 द्वयोः प्रथयन्ति न्यायः ।

Jaimini VII. iii. Adhi 9.

4 प्रतिषिद्धद्रव्यस्य प्रतिनिधित्वाभावन्यायः ।

Jaimini VI. iii. Adhi 6.

Class III. Group B.

Four maxims
regarding
Paryudasa.

Maxims regarding Paryudasa (qualifying and qualified prohibitions) &c.

(i) Pradeshānārabhya maxim.

“A prohibition that merely displaces a part of the descriptive clause of a Vidhi text, is merely a qualifying prohibition of the nature of an exception.”¹

(ii) Na tau pasau karoti maxim.

“When a negative clause merely declares that a certain thing does not occur in an Utpatti Vidhi, such a clause is to be taken not even as a Paryudasa but as an Arthavada.”²

(iii) The Sanyoga-prithaka maxim.

The same thing may be used to serve a subordinate purpose, and again to serve a principal purpose.

(iv) The Abhimarshana maxim.

To the same effect.³

Class III. Group C.

Maxims relating to alternative clauses and to the adjustment of general and particular Vidhis.

Two maxims
regarding
alternative
clauses etc.

(i) The Apachheda (losing hold) maxim.

“If a certain consequence is attached to an event, failing which another consequence is attached to

1 प्रदेशानारब्धविधानयोर्निषेधस्य पर्युदासताधिकरणम् ।

Jamini X. viii. Adhi 1.

2 न तौ पञ्च करोतेत्यादिनिषेधस्यैवादताधिकरणम् ।

Jamini X. viii. Adhi 2.

3 अभिमर्शेन न्यायः ।

Jaimini III. vii. Adhi 4.

another event, in such a case when both the events occur simultaneously—the consequence is optional.”¹

If, of the two alternative events, both happen one after the other, then that which happens last, is given effect to ignoring that which happens first.

(ii) The Maxim of the general and the particular.²

When there are two rules on the same subject, one general and the other particular, the particular rule prevails.

Class III. Group D.

Maxims relating to the equitable application of Smṛiti texts.

Three maxims regarding the application of smṛiti texts.

These are not strictly speaking maxims, but rules laid down by the Smṛiti writers. But they may be as well called maxims.

(i) “Smṛiti is of greater authority than principles of equity.”³

(ii) “If possible the principles of equity should be reconciled with the text law.”

(iii) “In a conflict between the text law and the principles of equity, the latter must be discarded and the former followed.”⁴

1 अपच्छेद न्यायः । Jaimini VI. v. Adhi 17.

2 ज्ञानस्यैवाग्नीषोमीयवृत्ताधिकरणम् । Jaimini VI. viii. Adhi 10.

3 अर्थशास्त्रात्, बलवद्भ्रमशास्त्रमिति स्थितिः ।

Yajñavalkya Ch. ii. 21.

4 यव निप्रतिपत्तिः स्याद्भ्रमशास्त्रार्थशास्त्रयोः अर्थशास्त्रोक्तमुत्सृज्य धर्म-
शास्त्रोक्तमाचरेत् । Ibid. i. 39.

Detailed con-
siderations
of maxims
of group A.

EXPLANATIONS AND DETAILED CONSIDERATIONS OF MAXIMS OF GROUP A.

Kalanja
maxim.

(i) The Kalanja maxim consists of two Sutras. The first of these somewhat metaphysically worded runs as follows.

"In an absolute prohibition a positive struggle is the result ; for, the prohibition is to be secured by abstention from the prohibited act."¹

The meaning of this Sutra seems to be that by prohibiting one not to do a thing you invite his attention to it, in the shape of a struggle with the conception of the wrong act. Therefore a prohibition is not proper.

The answer to this objection is "If effect be given to the Shastra, man is benefitted ; when Shastra is divorced from its object then it becomes a case of transgression of the law."²

Now, I shall give you Laugākshi Bhāskara's explanation of the Kalanja maxim and of a Pratishedha or Nishedha in the sense of condemnatory prohibitions. The following is Dr Thibaut's translation of his passage on the subject.

As explained
by Laugākshi
Bhāskara.

"By prohibition (Nishedha) we understand turning off man (from some action) ; for the purpose of sentences of prohibition lies exclusively in their effecting (man's) turning away from actions which would be cause of some disadvantage. The details are as follows. In the

1 प्रतिषेधककृतत्वात्क्रिया स्यात् प्रतिषिद्धानां विमक्तत्वादकथं चाम् ।

Jaimini VI. ii. 19.

2 शास्त्रानां त्वर्थवत्वेन पुरुषार्थी विधीयते तथोरसमवायित्वादादर्थे विध्यति
क्रमः । Jaimini VI. ii. 20.

same manner as an injunction conveying an instigation in order to give effect to its instigatory power intimates that the thing enjoined, for instance, the sacrifice is the instrument for obtaining some desired result and thereby instigates the person towards it, in the same manner a prohibitory passage, as for instance, "he is not to eat kalanja" conveying the idea of turning off (from some action) in order to give effect to its power of turning off, intimates that the thing prohibited, as for instance, the eating of kalanja is the instrument of bringing about some highly undesirable result and thereby turns man off from it. If it is now asked how a prohibitory sentence conveys the idea of turning off from some thing, we answer as follows. The sense of the word "not" is not connected with the sense of the root (of the verb in the prohibitory passage); for although the two words stand in immediate proximity the sense of the root presents itself as standing in subordinate relation to the actual creative energy (Arthibhâbana) which is expressed by the suffix (of words like Bhakshayet). For something which presents itself as standing in subordinate relation to one thing can not be connected with something else. Otherwise, in the sentence "bring the king's man" (lit. the king-man, rajapurusha) the king himself would enter into relation with the action (while in reality the king only stands in relation to his servant, the latter in his turn being the object of the action expressed by "bring").

Laugakshi Bhashkara, taking the prohibitory text "one is not to eat Kalanja" (Na kalanjam bhakshayet), explains the idiomatic force of the phrase (Na bhakshayet). He explains that the suffix "yat" means

“shall” and that the negative particle “not” is to be taken as attached to the suffix “yat” (shall), and not to the idea of Kalanja eating. For if it be taken, as attached to the latter idea then the sentence might mean “you shall eat but not Kalanja.” In this case strictly there would be no prohibition. So he labours to demonstrate that the gist of the sentence is “shall not,” and therefore the object of it is to turn off from eating Kalanja. This may appear to be making a hair splitting distinction, but it is of importance from the Mimânsâ point of view as will presently appear. The explanation of Nishedha Vidhi appears more clearly from Jaimini’s Sutrâs of the Kalanja maxim.

The objector says, “In a case of prohibition, mentally you entertain the idea of the action prohibited; for, you have to discriminate between the prohibited act and the negation of that act.”

The objector means to say what is the good of a prohibition when it invites the imagination to gloat on the action prohibited. The author answers,

“When an act is enjoined by the Shastra, it is for the purpose of the good of a person; if the good object be divorced from the meaning of the Shastra, then it becomes a case of transgressing it”¹

The meaning is this : —

In a case of prohibition you must take it, that not only is the particular external act prohibited, but the very intention of it which makes the act evil. Roughly speaking, the principle laid down is this :—

In a case of prohibition one should abstain from the

१ ब्राह्मणां तर्कवेन पुरुषार्थी विधीयते तथैव समवायि वाक्तादर्थे
विध्यतिक्रमः । Jaimini VI. ii. 20.

very idea of the act prohibited, and there ought to be no evasion of the Vidhi in any way.

Thus, this class of Nishedha Vidhis is to be interpreted most comprehensively. If the thing be prohibited, it can not be used even as a substitute for another thing."¹ In fact, this enlarging interpretation of the Nishedha Vidhis has been carried so far that when a thing is prohibited, if it be transformed by combination with another thing into a new substance, that new substance even is not permitted to be used. This is supported by the black kidney bean maxim which is referred to both by Jimutavahana and Vijnaneshwara. It may be said that no reason is found why Pratishedha Vidhis of this character should be so largely construed. But you should remember that the Nishedha Vidhis dealt with by the Mimânsakas relate generally to Purusha Dharma (duties of a religious and moral character). The word Purushârtha is expressly mentioned in sec. 20, Chap. II Book VI in explanation of it. In fact, it has been explained by later writers that Pratishedha is generally directed against some particular vicious tendencies in men. In such a view of the Pratishedha, the principle of construing it comprehensively cannot be said to be improper.

"Na hinsyeta"² (one should not injure another), "Nanritam vadeta"³ are examples of Nishedha Vidhis as given in the Vidhi Rasayana, page 123, Benares series. Na kalanjam vakshayet⁴ (do not eat

1 प्रतिषिद्धस्य प्रतिनिधित्वाभावात् । Jaimini VI. iii. Adhi 6.

2 न हिंसेत् । 3 नानृतं वदेत् ।

4 न कलशं मचयेत् ।

Kalanja) is also a Nishedha Vidhi. Kalanja means fermented food. So such a food is absolutely prohibited.

Shorasi
maxim
explained.

The Shorasi maxim treats of a conflict not between a condemnatory prohibition as in the Kalanja maxim and some thing opposed to it, but as between a prohibition, as recognized by recent writers, of the essential element of some definite positive proposition. For instance, there is the proposition : 'Use the Shorasi vessel at the dead of night.' Against this there is the text, 'Do not use the Shorasi vessel at the dead of night.' This is a case of direct conflict, and there cannot be any attempt to reconcile them. In such a case, option to follow one or the other rule is the only course left. But, if against the proposition 'Use the Shorasi vessel at the dead of night' you have the proposition, "Do not use the Shorasi vessel at the dead of night during a new moon time." This will not be a contradiction, but the second proposition will be read as a Paryudasa (exception), which does not affect the essence of the first proposition.

Dvayo-pra-
nayanti
maxim
explained.

The Dvayo-pranyanti maxim is the third maxim of Group A. Great importance is attached to it by the Hindu Jurists. It lays down, however, a very elementary principle, the principle that one should not blow hot and cold at the same time.

The maxim has its origin in the following texts regarding the four monthly-Yâga which is a Vikrita (development) of the Darsha-pournamasi and not of the Shaumika Yaga, as some (Purvapakshinas) opponents thought.

The texts are :

(1) "Upa atra vapanti."¹

"In this (four-monthly Yaga) the northern altar is to be established."

(2) "Na vaishvadeve upakiranti na Sunashirye."²

"The northern altar is not to be established either in the Vaishwadeva quarter or the Sunasiri quarter of the Yaga."

(3) Uroo va etau yajnyasya jat varuna-praghasah shakamedhascha iti, Dvayo pranayanti."³

"The two mainstay (legs) of the Yajna are the Varuna-praghâsha and the Shâkamedha. The two must have fire kindled on them".

The four-monthly Yaga consists of four sections. The first is Vaishwadeva, the second is Varuna-praghâsha, the third is Shakamedha and the fourth is Sunashiri, each forming a quarter of the whole ceremony.

The first text lays down the general rule that the northern altar, which is inevitably connected with fire kindling, should be established in the Yaga as consisting of the four parts. The second text lays down that the northern altar is not to be established in the first and last quarters of the Yaga *viz.*, in Vaishwadeva and Sunashiri. The third text says after exhibiting

1 उपान वपन्ति ।

Sreekrishna Tarkalankara's note to Jimutavahana's passage on Dvayo pranayanti.

2 न वैश्वदेवे उत्तरवेदिमुपकिरन्ति न सुनाशीर्यम् । Do.

3 उरु वा एतौ यज्ञस्य यत् वरुणप्राशः शाकमेधश्च तद्वयोः पचयन्ति । Do.

the importance of the second and the third quarters (Varuna Praghasha and Shakamedha), that the fire kindling should take place in the two.

Jaimini construes the three texts as follows :

The first text is a general rule Samanya Vidhi. The second is an exception to it. The third is an Arthavada (reciting clause) which shows the reason why the second and third are not subjected to any exception in respect of fire kindling.

The above construction harmonizes the three texts and does not introduce any conflict such as would result in an option (Vikalpa).

But the opponents will not construe the texts in that way. They argue as follows :

We concede that the first text is a general Vidhi, and that the second is a special negative Vidhi by way of an exception. But the exception is as regards the northern altar and not as to the kindling of the fire.

This being the case 'we would' they proceed to say, 'hold that the clause 'Dvayo-pranayanti' which occurs in the third text is intended to apply to the first and the last quarters (the Vaishwadeva and the Sunashiri). For, these are in need of such a clause to enable fire kindling, as the provision prohibiting the northern altar in respect to them raises a difficulty in the way of the fire kindling. Whereas with regard to the second and the third, the clause would be a superfluity, the fire kindling in these two being already provided by the general rule (Upa atra vapanti)'.

The opponents thus make out the kindling of fire in the Vaishwadeva and the Sunashiri. But on what is it to be kindled ? So they are yet in need of the

altar. This they make out in the following way. They say that there is a virtual conflict between the second text and the first, in as much as the first text by the clause '*atra upavapanti*' prescribes the kindling of the fire on the northern altar in all the four ceremonies, the second text prohibits the northern altar in two of the ceremonies. They proceed to hold, that by reason of this contradiction option is given, and we would take advantage of this option to make the northern altar in Vaishwadeva and Sunasiri just as in the two others.

The Mimânsakas say that this argument constitutes (Vidhi vaishamya) inconsistency of legal rules. This is a fault and can not be allowed.

The Mimânsakas put the fallacy as follows :

They say that the opponents once read the first text (the general Vidhi) as subject to the exception contained in the second text. They read it again as an absolute rule side by side with the second text which is read equally as an absolute rule creating contradiction. They get the fire by the first view and the altar by the second view. This is bad and cannot be tolerated.

The tussle between Srikara Misra and Jimutavahana as exhibited by the latter, very largely illustrates how Mimânsâ principles are respected and applied by Hindu Jurists. The two authors fight over the construction of certain texts of Yajnavalkya regarding the right of succession as between united and separated, and as between uterine and half-brothers. With reference to the text, 'The united brother succeeds' and the text 'The uterine brother succeeds', Srikara Misra argues that to make out from these

the proposition that a united half-brother takes equally with a separated uterine brother, one is to incur the fault of the Dvayo-pranayanti maxim. For, in order to support this proposition, he must once read either of the two texts as simply giving the right of succession, and again as giving a comparatively preferential right. By the one reading you get the right of a united half-brother and a separated uterine brother to succeed, and by the other reading you get the equality of their position as they would both occupy the same preferential position with reference to a separated half-brother. Srikara maintains that such a double reading is wrong. Jimutavahana, however, supports the proposition by a variety of arguments, as will be seen later on.

The effect of the Dvayo-pranayanti maxim is shortly this. A positive and a negative text may be either in conflict with each other or not. If there be reasons to hold that they are in conflict, you must stick to that view and vice versa. You can not shift your position at pleasure. The conflict occurs clearly in cases like that of the Shorasi maxim. There is no conflict when the negative text is a Paryudasa. Also there is no conflict, when by the force of the Kalanja maxim, a practice standing in the way of a condemnatory prohibition must be swept off.

A practice in opposition to a Pratishedha, is only saved where there is clear ground to hold, that the Pratishedha does not extend to the essence of the practice which is apparently conflicting with it. Such a case is discussed by Raghunandana. He takes up the rules sanctioning the immolation of animals for

purposes of sacrifice and raises the objection that these rules must be treated as nullity by virtue of the general negative Vidhi condemning the destruction of animal life—'Na hinsyeta.' He gets out of this objection by showing that the word 'hinsyeta' does not include in its meaning killing by way of sacrifice.

But such an argument can not hold good in the case of the general negative Vidhi "Nanritam vadeta" (do not speak falsehood) with reference to the observation of Manu, wherein he says that a man may tell a lie to save the life of a Brahman. If "Nanritam vadeta" be a general prohibition of telling lies on the part of those who have the privilege of performing Yajnas, then it cannot be argued that the telling of a lie to save a life is not within the general negative Vidhi—"Do not speak a falsehood."

So the observation of Manu mentioned must be taken as not having the force of a Vidhi, but as merely indicating that the violation of the general Vidhi may, in the case stated, be excused.

EXPLANATIONS AND CONSIDERATIONS OF DETAILS OF MAXIMS OF GROUP B.

Laugākshibhashkara explains Paryudāsa ¹ as follows :—

Explanatory
observations
on Paryu-
dasa.

"Where there is however an obstacle in the way of the word "not" being connected with what is expressed by the verbal suffix, it is connected exclusively with

१ यदातु प्रत्याचार्यस्य तद्वान्वये वाचकं तदा धात्वर्थस्यैव तद्वान्वयः। तस्य वाचकं द्विविधं। तस्य ब्रतमित्युपक्रमो विकल्पप्रसक्तिय

Laugākshi Bhāshkara p. 40 (Thibaut's translation).

what is expressed by the root itself. Such obstacles are of two kinds. (1) The beginning with the phrase such as "his vowed observances are as follows." and (2) the contingent probability of a Vikalpa (option).

"An example of the former kind is for instance, found in the following passage, "he is not to look at the rising Sun" as this sentence is read after a commencement has been made with the words "his vowed observances are as follows."

Laugākshibhâskara's view, as expressed above, is that in a Paryudasa the prohibition is not in the form of "shall not intend the doing of the thing but only in the nature of a direction that the thing should not be done under particular circumstances." Further he intimates that where by construing the prohibition as absolute, one would be forced to the use of option, the prohibition should be construed, if possible, as a Paryudâsa only. For instance, in the case of the text "he is not to look at the rising sun"; as this is stated to be in fulfilment of a vow, it is a self-made rule only applicable when the vow is made. Therefore it is a Paryudâsa.

In the first Adhikarana of Ch. VIII, Book X, which has been called Pradeshânârambha maxim, Jaimini explains Paryudâsa as follows :—

"Where the leading clause of a passage contains a general direction for the performance of a certain act and there is a prohibition of it under certain circumstances, the prohibition is to be taken as a legitimate exception or proviso (Paryudâsa).¹

1 प्रतिषेधः प्रदीर्घानाम्बिधाने च प्राप्तप्रतिषिद्धत्वादिकल्पः स्यात् ॥

Jaimini X. viii. 1

Essentially the Mimânsâ rules bearing on the topic of conflict are based on the same principles by which English writers on interpretation of statutes are guided. Maxwell has the following on the subject. "An author must be supposed to be consistent with himself ; and, therefore, if in one place he has expressed his mind clearly, it ought to be presumed that he is still of the same mind in another place, unless it clearly appears that he has changed it. In this respect, the work of the legislature is treated in the same manner as that of other author ; and the language of every enactment must be so construed, as far as possible, as to be consistent with every other which it does not in express terms modify or repeal. The law, therefore, will not allow the revocation or alteration of a statute by construction when the words may have their proper operation without it. But it is impossible to will contradictions ; and if the provisions of a later Act are so inconsistent with, or repugnant to those of an earlier Act that the two cannot stand together, the earlier stands impliedly repealed by the later."¹

Although in the case of the Smritis the whole of of them must be taken as proceeding from one source, the diversity of their contents is very great, and the apparent incongruities among diverse passages are far more numerous than is possible in the case of statute laws which also are supposed to proceed from one source.

Maxwell indicates only two courses with regard to conflict ; (1) to reconcile them if possible, (2) to reject

1. Maxwell, 3rd Edition pp. 214-215.

the text that comes after. But you have seen that the Mimânsâ rules and the Smṛiti rules on the subject are numerous.

In the first place, Jaimini shows how by taking a prohibitory clause as an Arthavada, a seeming conflict is reconciled in some cases; as in the case of a seeming conflict between an Apurva Vidhi and a prohibitory clause consistent with it. This principle relating to the Arthavâda, is constantly required in interpreting the Vyavahâra law.

The importance of the distinction between a Paruyudâsa and a Partishedha, in interpreting the Vyavahâra law, will be clear to you, if you consider the provisions regarding the exclusion from inheritance of persons by reason of certain causes of disability, although they would be otherwise heirs. These exclusionary rules are of the nature of Paryudâsa and not Pratisedha. They are so treated both by the Dayabhâga and the Mitâkshara. The Mitâkshara puts the subject as follows : —

“The author states an exception to what has been said by him respecting the succession of the son, the widow and other heirs, as well as the re-united parcener. An impotent person, an outcaste, and his issue, one lame, a blind man and a person afflicted with an incurable disease, as well as others (similarly disqualified) must be maintained; excluding them, however, from participation.”¹

1 पुत्रपत्न्यादिसंस्मृतिनां यद्वायव्यमुक्तं तस्यापवादमाह—

क्षौत्रेऽथ पतितस्तज्जः पशुवन्मलकीजडः ।

अश्वीऽपि किञ्चिद्विरोगाद्या भक्ष्यः स्तंभितं शक्ताः ॥

Colebrooke's Mitakshara. Chap. II, Sect. x, Para. 1.

Our present courts have been in many cases put to great labour in making out, that where a person having inherited the property subsequently incurs the one or other of the disabilities, he is not to be divested of the inheritance. If the fact that the exclusionary rule is a Paryudâsa and not a Pratishedha had been familiar with the courts and the profession, there would have been no necessity for a laborious discussion on the point with regard to the principle of vesting and divesting. The exclusionary rules being Paryudâsa cannot possibly extend beyond the time when the inheritance occurs, as they refer to that time only. On the contrary, if these rules had been Pratishedha, then, by the Kalanja maxim they would have a far-reaching influence, and in that case laborious arguments would have been necessary to secure a liberal working of the law. Again, the rule that the children of disqualified persons are not barred from inheriting, is also easily explained by the fact that the rules are merely Paryudâsas.

Mimânsâ writers raise the following question with regard to an exception (Paryudâsa). If a general negative Vidhi be violated, there is a penance for the violation ; for, to observe the negative Vidhi is a duty. But is a violation of an exception also to be visited with a penance? Some answer, no. Because to observe an exception is by itself no duty. Take, for instance, the text discussed by Raghunandana,—“ The Pârvana Srâdh must be performed during the new moon *but not in the night*. Here the words in italics form an exception. Suppose a man performs the Srâdh during the new moon but in the night. The effect is that he

gets no benefit from the performance of the Srâdh. But he commits no positive sin. He is only guilty of the omission of performing the general Vidhi. Raghunandana, however, says that in some cases the violation of a Paryudâsa (exception) is visited with a penance, as if it were a positive independent Vidhi.

EXPLANATIONS AND CONSIDERATIONS OF DETAILS OF MAXIMS OF GROUP C.

Explanatory
observations
on losing
hold maxim.

By the Apachheda (losing hold) maxim when two different effects are respectively attached to two events alternately, if both happen simultaneously, either effect may be attached optionally ; but, if one event follows the other, the result will be in accordance with the event that happens last. The latter part of this maxim agrees with the Roman rule where there are two repugnant clauses in a will, the last should prevail. The principle is illustrated thus :—

In the Yotishtoma Yâga, the priests come out of the hall one behind the other, each holding the backrobe (kachha) of the person going before. If the Udgâtâ loses hold, the Yâga must be finished without Dakshinâ, and a fresh Yâga must be performed in which the presents intended to be given in the Yaga, ought to be given. If the Pratihotâ loses hold, the sacrificer must make gift of all his possessions.

With regard to the texts as above mentioned two difficult contingencies may arise.—

(1) If both the priests, the Udgâtâ and the Pratihotâ lose hold simultaneously, what is to be done ?

(2) Suppose again that both lose hold, but one after the other, whose failure is to settle the consequence ?

With regard to the first case, the Adhikarana consisting of Sūtras 51, 52 and 53 decides, that the two failures having taken place simultaneously, the case becomes one of direct conflict, and therefore, option results. For, the consequences of the failure of the one and that of the failure of the other are contrary to each other and they cannot be reconciled. Therefore, if both the Udgātā and Pratihotā lose hold simultaneously then either a fresh Yaga is to be performed and only the intended presents made, or the sacrificer is to give away all that he has. As regards the case of one losing hold after the other, the Adhikarana in Sūtra 54 decides, that the sacrificer will have to make a fresh sacrifice with the intended presents, if the Udgātā lose hold last, and he will have to give away all his properties if the Pratihotā lose hold last. In other words, the result will be in accordance with what happens last. Savara Swami gives elaborate reasons for this conclusion.

The Sūtra on the point is very generally worded. It runs as follows :—

“If one precedes and another follows, the preceding becomes weaker as in nature.”¹

Evidently, it is with reference to the above Sūtra that the following rule has been enunciated by Dr. Siromani.

“When in order to establish any particular proposition, several reasons are given in successive clauses, each successive reason being preceded by such words,

१ योवांपर्यं पूर्वदीर्घस्य प्रकृतिवत् ।

Jaimini VI. v. 54.

as *kincha*, *yadva* &c., then the reason last given is to be accepted as the opinion of the author."

Sree Bhatta Sankara also, states that if two successive clauses are in conflict, that which precedes is barred by that which succeeds. This he places among the rules of *Prāptabādha* (exclusion by necessary implication).

This principle may be compared with the following principle of the English law of interpretation.

"And if the provisions of a later Act are so inconsistent with, or repugnant to those of an earlier Act that the two cannot stand together, the earlier stands impliedly repealed by the later."

The maxim of the general and the particular.¹

Maxim of the
general and
the particular
explained.

"Where there are two rules, one general and the other particular, the particular rule prevails."

There is a *Sruti* that the *Agnisomiya* animal shall be sacrificed. This leaves it open to the sacrificer to sacrifice any *Agnisomiya* animal. So the objector insists that as the injunction leaves the question open, you can sacrifice any animal *i. e.* any quadruped. But the author argues, at great length, to establish that this general injunction is purposely limited by the specific *Mantra* pointing to the goat as the proper animal for sacrifice. Therefore, only a goat is to be sacrificed.

It should be noticed, however, that in the maxim of the general and particular, both the rules are positive. There is no express maxim dealing with the case of a

१ काम्यसंवाचीबोमीयपयताधिकरणम् ।

Jaimini VI. viii. Adhi 10.

general negative rule and a particular negative rule, nor is there any discussion as regards the question of an exception to a negative Vidhi. The only topic which verges on these two questions is the topic of the *dan pashu* maxim, by which the particular negative Vidhi prohibiting the use of two Ajyabhâgas in the *pashu* Yâga is directed to be taken as an Arthavada, as such Ajyabhâgas would not be allowable in the Yâga even without this prohibition. In fact, where there is a general negative Vidhi and a particular negative Vidhi on the same subject, the latter merges in the former and thus becomes a mere Arthavâda.

EXPLANATIONS AND CONSIDERATIONS OF DETAILS OF RULES OF GROUP D.

The relative position of rules of equity and of the text law is shown by Yajnavalkya, Narada and Vrihashpati. These authors use the expression 'Artha Shâstra' in the sense of 'rules of relief,' and this naturally comes to mean 'rules of equitable relief'. For, considerations of the relief to be granted are practically matters of equity. These considerations are in some cases found stereotyped into what are known as Laukika Shâstra (popular principle) or as Laukika Nyâyas (popular maxims).

Explanatory
observations
on the Smriti
maxims.

Both Yâjnavalkya and Narada assume the possibility of conflict between the Dharma Shâstras (Smritis) and the Laukika Shastras (popular principles). Nârada says that, if possible, the two should be reconciled. But in cases when such reconciliation is impossible, according to both, the Dharma Shâstra should prevail.

Then as to the following text of Vrihashpati :

“Decision should not be based only on the Shâstras. By an unreasonable judgment there is loss of Dharma.”¹

This evidently contemplates Shâstras which are of the nature of quasi-law or which are of doubtful meaning, and not positive commands as to which there is no ambiguity. Even Jaimini allows that when a Shâstra is of a doubtful character, it must be interpreted in the light of reason.

Then as regards the conflict between one Smriti text and another.

The Smriti writers suggest more than one principle to be followed in such a case, as for instance, Yajnavalkya says,

“When two Smritis differ, that which follows equity as practised by the people of old, should prevail.”²

Narada says.—‘In cases of conflict of Smritis, decision should be based on reason (as embodied in custom); as custom is powerful and over-rides the sacred law.’³

Says Vrihashpati:—

“The first rank (among legislators) belongs to Manu because he had embodied the essence of the Vedas in

- 1 केवञ्च शास्त्रमाश्रित्य न कर्तव्यो हि निश्चयः ।
युक्तिहीने विचारे तु धर्मोद्धानिः प्रजायते ॥

Virhashpati.

- 2 धर्मशास्त्रविरोधे न्यायस्तु वलवान् व्यवहारतः ।

Yajnavalkya II. 21.

- 3 धर्मशास्त्रविरोधे तु युक्तियुक्तो विधिः स्मृतः ।
व्यवहारो हि वलवान् धर्मोऽस्मादधीयते ॥

Narada.

his work, that Smriti (or texts of law) which is opposed to the tenor of the laws of Manu is not approved."¹

The above rule regarding the superiority of Manu's Smriti, however, is subject to the infirmative circumstance that Manu is the oldest authority, and as such some of his teachings may have become obsolete by time. This is indicated by the following text of Parâshara.

"The law of Manu is authoritative in the Satya Yuga, the law of Gautama in the Tretâ, in the Dwâpara Sankha Likhita, and in the Kali the law of Parâsara".²

Sri Bhatta Sankara in his book called *Mimânsa Bala Prakâsha* treats at some length the subject of what he calls *Kalpya Vidhis* (constructive *Vidhis*). These *Kalpya Vidhis* are nothing more or less than *Vidhis* presumed by reason. He, first of all, divides these *Kalpya Vidhis* into *Kalpya Vidhis* proper and *Kalpya Nishedha* *i. e.*, into positive and negative constructive *Vidhis*. He then divides *Kalpya Nishedhas* into seven classes, among which are *Smriti Kalpya*, *Achara Kalpya*, *Arthavada Kalpya* etc.—

Smriti Kalpya Pratishedha is illustrated by the example "Let not persons of the same Gotra be married." This rule is not to be found in any express text but

- 1 वेदाधीननिवृत्त्यात् प्राधान्यं हि मनोऽकृतम् ।
मन्वर्धेविपरीता या सा कृतिर्न प्रशस्यते ॥

Vrihashpati.

- 2 कृते तु मानवा धर्मास्तेषां गौतमाः कृताः ।
वापरे ब्रह्मविहिताः कलौ पाराशराः कृताः ॥

Parâsara.

is an extension of a principle contained in certain texts.

As an instance of the Achâra Kalpya Pratishedha the prohibition of *parana* (break-fasting) at the time of *Hari vasara* is mentioned.

In some cases the digest writers, in reconciling conflicting texts, do not hesitate to avail of equitable and reasonable considerations to a great extent. Sometimes they arrive at a conclusion in the nature of a compromise, much in the shape of a constructive Vidhi. For instance, Vijnâneshwara deduces the rule that a widow inherits her husband's property, provided he was not living jointly with his brothers when he died, from a number of texts some of which clearly asserted the widow's right of succession unconditionally ; some virtually negatived her right altogether ; and a few indicated that she was to be postponed to her husband's brothers.

Jimutavâhana tries to reconcile the texts to a great extent by appealing to Shastrik reason and sense, and practically adopts those texts which coupled with reason and sense weigh heavier. But, at the same time, he does not unceremoniously discard the texts which contradict the texts approved by him. He suggests a particular reading of these texts taking some degree of grammatical liberty. Jimutavâhana first of all clears up the text of Vrihat Manu from certain arguments arising out of the absence of any possessive pronoun before the words 'entire share.' He shows that the word 'his' *i. e.* 'husband's' is understood before 'entire share.' Then he refutes the compromise arrived at by Vijnaneshwara, that the widow takes if her husband was not joint with his brothers.

Section II. Miscellaneous Maxims.**Class IV. Group A.**

Maxims regarding personal capacity and incapacity.

(i) Maxim regarding the necessity of qualifications.

Maxims re-
garding com-
petency.

"There must be rules of qualifications as indicated by the nature of a complete act".¹

"The qualifications with regard to any special class of acts are generally determined in three ways ; by texts of general competency, prohibitory Vidhi texts, or by specific mention."²

General competency is indicated by the text :

"Duties must be done by those who are pure and living at the time."³

Living at the time is not alone sufficient. He must have the capacity to understand the nature of the business.

"That also which a seemingly independent person does, who has lost control over his action, is declared an invalid transaction, on account of his want of real independence."⁴

1 कर्तुर्वाच्युत्तिमयोगात् विधिः कार्त्तव्यम गम्यते

Jaimini VI. i. 5.

2 विधेय आद्यते वार्ता विशेषेण प्रतिक्रियम् ।

योगत्वप्रतिबिम्बत्वविशेषेण पदान्वये ॥

Tithitattwa p. 98. (Serampur Edition).

3 यच्चो तत्कालजोषो कर्मकुर्व्यात् ।

Tithitattwa p. 22. Do.

4 स्वतन्त्रोऽपि हि यत्कार्यं कुर्यादप्रकृतिं मतः ।

तदप्यङ्गतमेव स्यादस्वातन्त्र्यस्य हेतुतः ॥

Nārada.

(ii) The maxim regarding the competency of women.

"In the opinion of Bādarāyana, all without any distinction (who desire heaven) can perform sacrifices. A woman, therefore, is included, because the whole mankind without any distinction is included."¹

"In fact, in the case of married people, the husband and wife must join in sacrifice."²

As regards establishing the sacred fire, the husband is a necessary party.

"Qualification is recognised; therefore the dual number (is made up) by a wife."³

(iii) The maxim that poverty is not disqualification.

"Not so, because (wealth is) unstable (that is, one may possess it or not); necessarily it may be acquired."⁴

(iv) The maxim that loss of any limb is not disqualification.

"Again, the maimed (has) that quality (of competency to sacrifice)."⁵

1 आर्तिं तु बादरायणोऽविशेषात् तस्मात् स्त्रियपि
प्रतीयेत आत्मैस्त्वाविश्रितत्वात् ॥

Jaimini VI. i. 8.

2 बाने दम्पत्योः सहाधिकाराधिकरणम् ।

Jaimini VI. i. Adhi 4.

3 नृचक्षुः तु विधानज्ञात् यथा द्वितीयशब्दः स्मात् ।

Jaimini VI. i. 23.

4 अनिव्यज्यान् तु नैवं स्वाहवादि दम्पसंवीतः ।

Jaimini VI. i. 40.

5 अङ्गहीनश्च तदर्थः ।

Jaimini VI. i. 41.

"But persons suffering from incurable diseases cannot perform a sacrifice."¹

Class IV. Group B.

Maxims relating to the conditions which the performers of an act must observe.

Maxims regarding conditions to be observed by the performers.

(i) "If an act which is originally optional be commenced, it must be completed in accordance with the prescribed rules."²

(ii) "Such parts of a permanently enjoined act as are essential, are alone to be performed".³

(iii) "A material may be substituted for a material which is spoilt and has become useless".⁴

"The substitution takes place, because the performance of an obligatory act is a general duty".⁵

(iv). "None can be substituted in the place of the sacrificer himself".⁶

1 अचिकित्साकुर्वेकस्यस्यमानविकाराधिकरणम् ।

Jaimini VI. i. Adhi. 10.

2 आरब्धं कार्यकर्मकोऽपि समाप्तिनियमाधिकरणम् ।

Jaimini VI. ii. Adhi. 3.

3 अथ तिले यथाशक्ति अक्षानुष्ठानाधिकरणम् ।

Jaimini VI. iii. Adhi. 1.

4 द्रव्यापचारे प्रतिनिधिना समापनाधिकरणम् ।

Jaimini VI. iii. Adhi. 4.

5 आत्मनो वा चोदनाद्यादिशेषात् ।

Jaimini VI. iii. 15.

6 स्वामिनः प्रतिनिध्यभावाधिकरणम् ।

Jaimini VI. iii. Adhi. 7.

(v). "The principal material should be used even if a substitute be better and more useful".¹

(vi). "Even a principal material should be given up and a substitute made for it, if it conflict with the purpose of the act".²

(vii). "Every one contributing to a sacrificial act obtains the whole benefit of the sacrifice".³

Class IV. Group C.

Maxims regarding the ownership of property.

Maxims regarding property.

(i). "The disposing power belongs only to the owner."

"Of that only, one has the disposing power of which one is the owner, other things not being within his competency".⁴

The commentators take this Adhikar na as showing that a man cannot give away his presents in carrying out his vow of giving away all his property. But this maxim really is of a comprehensive character and indicates what is the essence of the proprietary right. It also indicates the conditions of owning a thing, inasmuch as it shows that in order to own a thing, there must be a person who can exercise dis-

1 सत्त्वपि संस्कारयोग्येऽस्तुत्ये मुख्यस्यैवोपादानाभाधिकरणम् ।

Jaimini VI. iii. Adhi. 18.

2 प्रधानाद्योक्तस्य मुख्यस्य सत्त्वपि प्रतिनिध्यादानाधिकरणम् ।

Jaimini VI. iii. Adhi. 19.

3 सत्वे समानकल्याणां उद्वाधिकाराधिकरणम् ।

Jaimini VI. vi. Adhi. 1.

4 वस्य वा प्रभुः स्वादितरस्वाश्रयत्वात् ।

Jaimini VI. vii. 2.

posing power over it. Hence the following principles have been derived from the above by later writers.

Five principles regarding property.

- (1) Property can never be in abeyance.
- (2) Property must be vested in some person, real or ideal.
- (3) Ownership is extinguished by sale, gift, death, degradation and change of religious order.
- (4) Property is for enjoyment and acts of religious merits.
- (5) Everyone is capable of acquiring or holding property.

The latter rule is also directly supported by the Jaimini Sutra 41 Chap. i, Book VI.

(ii). The maxim that there is no ownership in the king to the soil which constitutes his dominion.¹

This maxim cannot be better explained than in the language of Nilakantha. He says :

It is stated in the sixth book of the Purva Mimânsâ, that the whole earth cannot be given away by the king of the world; neither the (whole) Mandala (dependency) by the ruler of that dependency. The ownership in each village, field and the like of the whole earth, or the dependency belongs solely to the respective Bhaumikas or landlords. The ruler has only to take the taxes. Hence, in what is now technically called a gift of land, a gift of the soil is not accomplished, but only a grant of due allowance (is provided) etc, etc.²

1 विन्यजति पृथिव्या अर्देयत्वाधिकरणम् ।

Jaimini VI. vii. Adhi. 2.

2 Vyāvahāra Mayukha, Mandalik's Edition pp. 34-35.

Mr. Colebrooke's observations on this Adhikarana are as follows:—

"A question of considerable interest, as involving the important one concerning property in the soil of India, is discussed in the sixth lecture. At certain sacrifices, such as that which is called Viswajit, the votary, for whose benefit the ceremony is performed, is enjoined to bestow all his property on the official priests. It is asked whether a paramount sovereign shall give all the land, including pasture ground, highways, and the site of lakes and ponds; a universal monarch, the earth; and a subordinate prince, the entire province over which he rules?"

To the question the answer is:—"the monarch has not property in the earth, nor the subordinate prince in the land. By conquest kingly power is obtained, and property in house and field belonged to the enemy. This maxim of the law, that 'the king is lord of all excepting sacerdotal wealth' concerns his authority for correction of the wicked and protection of the good etc."¹

Besides the miscellaneous maxims mentioned above I would give here a few more of a decidedly legal character, gathered from Manu.

1. "It is for the king to protect the property of barren women deserted by their husbands, or women who are childless and friendless or are widows and diseased."²

1 Colebrooke's Miscellaneous Essays pp 345-46.

2 ब्रह्मपुत्रास्तु चैवं स्वाद्रवर्तं निष्कृष्टास्तु च ।
पतिव्रतास्तु च स्त्रीषु विधवास्तु रास्तु च ॥

Manu VIII. 28.

2. "If one enjoy and use the property of another such as cattle etc. as a friend, the owner's right is not lost by such enjoyment and use. But the right is lost when for a period of ten years one enjoys the property of another in his presence and without objection and not as a friend."¹

3. "Use and enjoyment does not destroy the right of the owner when the property is the borderland of land or it belongs to a minor or is placed in the possession of another as a deposit."²

4. "If the interest is monthly and is allowed to accumulate, the creditor is not entitled to recover more than double amount, but including interest, and not more than five times, if the thing lent be cattle, crop or wood."³

5. "Compound interest among other unconscionable stipulations is not allowable by the Shastra."⁴

- 2 सम्प्रीत्या भुज्यमानानि न पश्यन्ति कदाचन ।
 धेनुवृद्धौ वृद्धग्रन्थौ यस्य दस्यः प्रयुज्यते ॥
 यत्किञ्चिद्दशवर्षाणि सन्निधौ प्रेषते धनौ ।
 भुज्यमानं परेणूची न स तन्नश्यमर्हति ॥

Manu VIII. 146-147.

- 2 अन्नक्षयेदपोमच्छी विषये चास्य भुज्यते ।
 भयं तद्वावहारेण भोक्तातदद्रव्यमर्हति ॥

Manu VIII. 148.

- 3 कुसीदवृद्धिर्गुण्यं नात्येति सकृताहता ।
 आन्ये सदे खवे बाह्ये नातिक्रमति पञ्चता ॥

Manu VIII. 151.

- 4 नातिसांयसरीं वृद्धिं न बाह्ये पुनर्हरेत् ।
 अन्नवृद्धिः काश्चवृद्धिः कारिता कायिका च या ॥

Manu VIII. 153.

6. "Contracts by the drunken, the insane, infants, and men past eighty years of age, and by one without consideration are not valid".¹

7. "A promise to do a thing reduced to writing is not binding if not sanctioned by law".²

8. "The sons are to pay the debts of their deceased father, provided the debts be not contracted as a security or in any immoral way".³

9. "Fraud vitiates sale, mortgage and gift".⁴

10. "If a man die having contracted a debt for the necessities of the family, the family members whether divided or undivided must pay off that debt".⁵

11. "If duringt he absence of the master a servant contracts a debt for the family, the master must pay it".⁶

- 1 मत्तोन्मत्तात्तान्मन्त्रोन्मत्तैश्चैव स्वबिरेष वा ।
असंवद्वक्तव्यं व्यवहारो न विधीयते ॥

Manu VIII. 163.

- 2 सत्या न भाषा भवति यद्यपि स्यात् प्रतिष्ठिता ।
वदित्वेनाप्यथ धर्माप्रियताद्वावहारिकात् ।

Manu VIII. 164.

- 3 दानप्रतिश्रुतिं प्रति दायद्वानपि दापयेत् ।

Manu VIII. 160.

- 4 योगधमनविज्ञोऽपि योगदानप्रतिश्रुतिं
यत्र वायुपथिं पश्येत्तत्सर्वं विनिवर्तयेत् ॥

Manu VIII. 165.

- 5 यज्ञोक्ता यदि नष्टः स्यात्कुटुम्बार्थं कृतोऽव्ययः ।
दातव्यं वाच्यवैतत् स्यात् प्रविभक्तैरपि स्वतः ॥

Manu VIII. 166.

- 6 कुटुम्बाद्येऽप्यधोऽपि व्यवहारं समाचरेत् ।
स्वदेष्टे वा विदेष्टे वा तं व्याघातं विचारयेत् ॥

Manu VIII. 167.

12. "If a transaction such as is brought about by force for the execution of a document or the like, the transaction is void".¹

Many of the principles stated above are regarded as principles of equity under the English law. However, such principles have but a very remote connection with the subject of interpretation. So I should not multiply them here. I have referred to the above principles just to show you that the Hindu law is not wanting in enunciation of the fundamental principles of law.

1. वलाहृतं वलाहृतं वलाहृतं यथापि लिखितं ।
सर्वान् बलकृतानर्थान्कृतान्मनुरत्रवीत् ॥

Manu VIII. 168.

LECTURE VII.

CERTAIN PRINCIPLES OF INTERPRETATION OF COMMON KNOWLEDGE OR THE POPULAR MAXIMS.

Jainini's maxims of interpretation are of the greatest binding force. The popular maxims (Laukika Nyâyas) certainly cannot claim such an authority. Nevertheless many of these latter maxims are recognised as authoritative. The reason is not far to seek. Law is common sense, as Sir Henry Maine observed on one occasion. And even according to the old Smṛiti authors such as Vṛihaspati and Nârada, the administration of the law should be conducted with common sense. And what are these popular maxims but expressions of common sense? Sir J. Mackintosh speaks of them as "the condensed good sense of nations". These maxims are distributed widely in the ancient and modern Sanskrit literature under the name of Laukika Nyâyas. Their origin is various. Some of them can be traced to striking passages of some ancient poets. For example, the Panka-prakshâlana maxim¹ or the maxim—'Better to avoid the mud than to wash it off.' This Nyâya which is a very well-known one, quoted by Sreekrishna Tarkâlankâra in his commentary on Dâyahâga, cited more than once by Sankara in his exposition of Brahmasutra, and on several occasions by Anandagiri in his commentary on Sankara Bhâshya, and also found in Panchatantra, can be traced to a passage of Vânaparva of Mahâ-

Preliminary observations on the binding force of the popular maxims.

¹ पङ्क प्रक्षालन न्यायः ।

bhârata. Many of them had their origin in the current popular stories, and in some cases, it is unfortunately difficult at this distant date to determine exactly the details of the story which gave rise to them. Some of them again seem to be based on facts, real or supposed, as for instance, the maxims called that of the Lion's look¹ and the Crow's eyeball.² Others again show the sympathies and antipathies of the people of the time, and not a few of them are expressions of cutting sarcasm.

Thus you will see that, of the popular maxims, many would be but of little use to a lawyer in interpreting law. But, as already said, a large number of them are useful to him, and have been so recognised. If these popular maxims which bear on law had been found in a work collected together, such a work would have been of very great advantage to the law profession. Unfortunately there is no such work.

There is a number of popular maxims in the dictionary by Târânath Tarkavâchaspatis; some of them are shown in V. S. Apte's Dictionary; Pandit Satyavrata Shâmasrami's contribution to the Pundit contain a description of some popular maxims. The Bengali Encyclopædia named Viswakosha also contains an extensive collection of them.

All these collections appear to have derived their origin from the two ancient works on these popular maxims by a Rajput named Raghunâth. His works are Laukika Nyâya Ratnâkara which is his larger treatise,

1 सिंहावलोकनम् ।

2 क्रावचिर्गोचकम् ।

and *Laukika Nyâya Samgraha*, which is an abridgement of his larger treatise. Raghunath appears to have collected these *Nyâyas* from quotations in the Sanskrit books. But, unfortunately, he has given no references of the books from which he has made these quotations. No one seems to have given more patient labour and research to the subject of popular maxims than Colonel G. A. Jacob of the Indian staff corps. This old gentleman with his failing eye sight has collected about two hundred popular maxims, and have published them in the form of two booklets, named *Laukika Nyâyanjali* or the Handful of popular maxims. Although my present object is only to refer to those popular maxims, which bear on the interpretation of law texts. I have given you the above references to enable such of you as feel an interest in the subject to study it more thoroughly.

Raghunath and following him Colonel Jacob designates these maxims as popular sayings (*Laukika Nyâyas*). I have not discarded this nomenclature. But you will see that most of the maxims that I shall mention are really much more than popular sayings. They may well rank with the Roman maxims which are treated by Mr. Broom. In fact, many of them are regarded as having the force of *Shâstra*. I have in an earlier lecture explained the meaning of the term *Shâstra* fully. But here you may take *Shâstra* shortly to mean enunciation of principles such as are recognised to be binding. That most of the maxims have such a character, is demonstrated by the fact that they are relied upon by persons of very high authority, not excluding the writers on *Mimânsâ*, such as Savara

Swami, Kumârila Bhatta, and even Jaimini himself. You will see instances of this. Lawyers like Medhâtithi, Kulluka Bhatta, Jimutavâhana, Sreekrishna Tarkâlankâra also unreservedly refer to these maxims.

Section I. Popular maxims with legal significance.

Maxims with
legal signi-
ficance.

Now I proceed to enumerate some such popular maxims as have acquired a legal significance.

(1) The maxim that if a thing is once done, the requirements of Shâstra in that respect is fulfilled.¹

I have already shown that this maxim is a generalisation of Jaimini's maxims regarding Tantra and Prasanga.

(2) In the same passage a word occurring once cannot be taken in its primary and in its secondary sense.²

This maxim has been utilized by Jimutavâhana on more than one occasion.

(3) More words, more meaning.³

This maxim has been referred to by Kâshirâm in his commentary on Shuddhitattwa. It has been also quoted by Raghunandana in Udvâhatattwa.

(4) The maxim of understanding up to the limit of the power of an expressson.⁴

It has already been pointed out that this maxim emphasises the literal principle of construction, by laying down that you cannot go beyond the power

1 सकृन् कृतं कृतः शास्त्रार्थः ।

2 सकृदुच्यते शब्दः सकृदर्थं मनसि ।

3 शब्दाधिक्यादर्थोपपत्तिः ।

4 यावद्वचनं वाचनिकं ।

of words. It occurs twice in Bhâmati, pages 710, 742. Anandagiri too quotes this maxim in his comment on 4. 3. 4. Compare Jaimini III. ii. 3 and II. iii. 2.

(5) The maxim of fifty in a hundred.¹

The greater includes the less. See Savara VI. I. 43.

This maxim is made explicit by another which says that, if a man has three sons, it is not proper to speak of him as the father of two sons, though being the father of three, he is also father of two. It is equivalent to the Latin maxim *buane magus continet in se minus*. The greater contains the less.

(6) The maxim that causing to be done is to do.²

To be more explicit, the maxim is that, he who causes a thing to be done by another is the real doer of it. This is exactly equivalent to the Latin maxim, "*Facit per alium facit per se*" This maxim has been used by Anandagiri in his commentary on Brahmasutra Bhâshya 1. 2. 21.

(7) The maxim that current sense steals away that which is derived from the root.³ Mr. Jacob renders it as follows: "Popular usage overpowers etymological meaning." This Nyâya is quoted in various places such as Vivaranaprimeyasangraha,⁴ Panchapâdikâvivarana,⁵ Vedantakalpataru⁶ and Anandagiri on Brahmasutra Bhâshya.⁷

1 अने पञ्चाशत् ॥

2 यः कारयति सकरोत्येव ।

3 इदियोगमपहरति ।

4 1. 3. Pp. 134, 135.

5 Pp. 132-3.

6 Pp. 207.

7 1. 3. 42.

This maxim is analogous to Latin, "*Optimus interpres usus*."—Usage is the best interpreter of things.

(8) The maxim, definition alone is no proof.¹ This means that bare assertion of a matter is no proof of the matter asserted. This is found in Sarvadarshanasamgraha.

(9) 'Do not make two sentences or ideas, when one is possible.'² This maxim has been fully explained.

(10) The maxim of eating from the brazen vessel.³

Jaimini refers to this maxim in Sutra 35, chapter ii, Book XII in which he says :

If there be several conditions not inconsistent with each other, then (the condition attaching to what is higher in position) should be adjusted so as not to interfere with the condition attaching to the inferior in position, just as in the case of the eater from the brazen plate. This maxim 'the eater from the brazen plate' is explained by Savara as meaning that, where there are the student and the teacher to take food, the former with a pre-existing vow to take his food from brazen plates only, then the latter, the leavings of whose food the student is bound to partake, must accommodate the student by taking his food served in a brazen plate, though it is not suitable to him. The import of this maxim appears to be that where it is possible, inconsistencies should be reconciled.

(11) The maxim of the lamp on the threshold.⁴

1 एकास्मिन् प्रतिज्ञा द्वि प्रतिज्ञातं न साधयेत् ।

2 सम्भवत्येकवाक्यत्वं वाक्यमेदो न वेच्यते इति न्यायः ।

3 कांस्यभोजौ न्यायः ।

4 दीप्यतीदीप न्यायः ।

A lamp so placed gives light both inside and outside the house ; and the maxim is applied to something which fulfils a two-fold purpose. Savara in his Bhâshya on Jaimini XII. i. 3. practically makes use of this Nyâya, though he does not actually mention the word Dehalee.

(12) The maxim of the resultless being subordinate to that which has a result.¹

The principle that whatever has no result of its own, but is mentioned in connection with something else which has such a result, is subordinate to the latter. This is Dr. Thibaut's rendering of the Nyâya as it occurs in Brahmasutrabhâshya 2. 1. 14 (page 443), and he explains it thus in a foot-note as follows:

"A Mimânsâ principle, a sacrificial act, for instance, is independent when a special result is assigned to it by the sacred texts; an act which is enjoined without such a specification is merely auxiliary to another act". See also Savara IV. iv. 19.

(13). The maxim of the Brahmana and the holy traveller.²

In such a sentence as, 'the feasting of the Brahmanas and holy travellers', the separate mention of the latter who are really included in the former term, merely emphasises their position as a special section of the general body. It also appears in Kumarila Bhatta's Tantravârtikâ, pages 423,590.

(14) The maxim of the examination of a crow's teeth.³

1 फलवत् सन्निधावफलं तदङ्गम् ।

2 ब्राह्मण परित्राजकं व्याखः ।

3 काकदन्त परीक्षा व्याखः ।

This is applied to any useless and manifestly fruitless enquiry. It occurs in Sankara's Bhâshya on Kathâ Upanishada 1. 25. It is also found in Jaiminiya Nyâyamâlâ vistâra 4. 1. 1.

(15) The maxim of the cattle and the bull.¹

This maxim is of the same effect as that of the Brahmana and the holy traveller. It means that where two words are joined together almost meaning the same thing, the second word is intended to emphasise the meaning of the first. Kulluka refers to this maxim in his exposition of Manu viii. 28, where six classes of women are enumerated as having a claim to the king's protection.²

(16) The maxim of the lost horses and burnt chariot.³

This is based on the story of two men travelling in their respective chariots, and one of them losing his horses and the other having his chariot burnt, through the outbreak of a fire in the village in which they were putting up for the night, the horses that were left were harnessed to the remaining chariot, and two men pursued their journey together. Its teaching is union for mutual advantage. That the story is very old is clear from the fact that the saying is quoted in the 16th vartika to Pânini and is explained by Pâtanjali. It is referred to in Kumarila Bhatta's Tantravartika pp 15, 709, 832.

1 गोवलीवहं न्यायः ।

2 यत्र चानेक शब्दोपादाने गोवलीवहं न्यायेन पुनश्चक्ति परिहारः ।

Kulluka's commentary.

3 गदासदश्वरथः न्यायः ।

(17) The maxim of the two monsters.¹

This Nyâya is understood to imply that where two contradictory facts are equally strong, they neutralise one another. In this sense it has been applied in Sâmkhyatattwa Kaumudi. Raghunâth says that this maxim holds good when the things in opposition are of equal strength, but when they are of unequal strength and the weaker is to go to the wall, then the Mâtsya Nyâya is employed. The name of the Nyâya is taken from the story of two monster brothers, Sunda and Upasunda, who quarrelling over the heavenly woman Tilottama destroyed each other. This maxim is analogous to the Latin, *Allegans contraria non est audiendus*. He is not to be heard who alleges things contradictory to each other.

(18) The maxim of the larger fish eating the smaller.²

This Nyâya has been used by Kulluka, the well-known commentator of Manu Sanhita, in his commentary on Manu³ vii. 20. This Nyâya means, as has been explained above, that the weaker goes to the wall, just as the great fish eats the little.

(19) The maxim that a thing is not to be taken as imperceptible because it is perceived with great difficulty.⁴

This maxim is quoted in Tantravârtika p. 6 (Benares edition) and also in Nyâyamanjari p. 422. (Vizianagram series).

1 सुन्दोपसुन्द न्यायः ।

2 मात्स्य न्यायः ।

3 यत्र बलवत्त दृष्ट्वैतान् द्विष्यति मत्स्यन्यायः एवमादित्युक्तम् ।

4 न यद्विरिष्यमानाश्च मृग्यते तदप्रत्यक्षम् ।

(20) The maxim that one riding on a horse cannot be overtaken by one on an ass.¹

Kumarila Bhatta refers to this Nyâya to ridicule the claims of those resting on the authority of the Smṛiti to match those who are grounded on the authority of the Śruti.²

(21) The maxim—Do not strike at your own existence.³

Literally "it is wrong to quarrel with that on which one's livelihood depends". This maxim is found in Paribhâshendushekhara p. 85, which employs it to support the proposition that when one relies on a combination of two things as constituting ground in his favour, he can not at the same time shut out a rule arising from that combination which will go against the ground taken by him.

(22) The maxim—Go not far if you find it at your hand.⁴

The maxim says that "if you can find honey in the Arka plant which grows in your yard, no need of going into the mountains in quest of the bee-hives."

This Nyâya has been referred to by Savara in his commentary on Jaimini I. ii. 4. The very passages of Savara have been quoted by Vâchaspati Misra in Sâṅkhyatattwa Kaumudi. This maxim has also been referred to by Sankara in his commentary on Vedānta Sūtra III. iv. 3.

1 यद्वेन वृत्तपुरा तत्पश्चात् यद्भैः प्रान्तं केनोपायेन वक्रयात् ।

2 See Tantravartika p. 730 and Nyayamanjari p. 262.

3 अपनीचविरोधस्यायुक्तम् ।

4 यद्वेनोपायः ।

This Nyâya is also expressed by the following aphorism :

(23) When an object can be attained by following a straight path, what is the good of following circuitous course ?¹

This maxim also is twice used by Vachaspati Misra in his Nyâyavartikatâtparityatika.

(24) The Nyâya of the mangotop or the maxim — what predominates, gives the name.²

A mango-top means a grove in which mango trees abound, not that no other trees are to be found in it. This Nyâya finds an expression in Jaimini's Sutra 10, iii. III., which means, in the case of Srutis that which abounds in a certain Veda is taken as belonging to that Veda.

(25) The maxim—Join at one end, break at the other.³

This maxim means a case in which one cannot rely upon an argument without incurring an equally strong objection. This Nyâya has been twice used in Sarvadarsanasamgraha.

(26) The maxim of wristlet of the wrist.⁴ This maxim means that when a term by itself implies its relation to a certain thing, additional employment of the name of that thing must have some additional meaning ; as for instance, the expression, the wristlet of the wrist, means that the person is actually wearing

1 अक्षुण्णमार्गेण सिध्यतीत्यस्य वक्रेण साधनार्थोक्तं न्यायः ।

2 आश्रयण न्यायः ।

3 एकमनुसन्धित् सतीत्यपरं प्रत्ययते इति न्यायः ।

4 करकण्डन न्यायः ।

it upon his wrist. This principle is also expressed generically by the Kârikâ, Shabdadhikyat Arthadhi-kyam.¹

(27) The maxim of the crow and the curdled milk.²

This maxim means that looking to the purpose of a proposition, it must be taken in a general sense though expressed in particular words. This corresponds to Jaimini's Grahaikattwa Nyâya.³

(28) The maxim of what after.⁴

This maxim is discussed by the commentators of the Mimânsâ Sûtras under Sûtra 32, Ch. 1. Book I. This Nyâya means that when the more difficult of the two propositions is proved, the simpler one is to be taken as proved. The Dandapupa Nyâya⁵ or the maxim of the loaf and the staff is to a similar effect.

(29) The maxim of fetching water.⁶

This maxim implies that when a principal purpose is expressed, all its subordinate incidents are included therein, just as when one says 'Fetch me water for drink', it means, 'Fetch for me a glass or other suitable vessel filled with water.' This corresponds to the Prasanga Nyâya of Mimânsâ.

(30) The maxim of the staff and the cake.⁷

1 शब्दाधिक्यात् अर्थाधिक्यम् ।

2 कान्तदध्युपघातकः न्यायः ।

3 यद्वैकल्यन्यायः ।

4 कैमुतिन्यायः ।

5 दण्डापूपन्यायः ।

6 जलानयन न्यायः ।

7 दण्डापूप न्यायः ।

This maxim is a very favourite one with Jimutavahana. He applies it more than once. It means *a portion*. The Nyâya arose thus : a cake was placed upon a staff and left at the corner of a house. In the morning, the cake was missing, and it was found that parts of the staff had been bitten off, evidently by a rat. Under these circumstances, it must be presumed that the rat who bit off parts of the staff must have eaten up the cake.

(31) The maxim—'Prevention is better than cure.'¹ Literally, 'better not to touch the mud than to have to wash it off.'

This Nyâya is mentioned by Sreekrishna Tarkâlan-kâra, in his commentary on Dâyahâga.

(32) Where the reason of a thing is found by perception, it is not proper to seek for any other proof for it.²

It is on a similar basis that Jaimini regards the Mantras to be mere Niyamas regarding tangible objects.

(33) The maxim of the Brahmin Bandhu ascetic.³ It means that where a person is converted from one creed to another, but yet retains the denomination of his former creed, such an expression is used. It is pretty clear that according to the Hindu Law, conversion to Buddhism did not cause a forfeiture of the rights of a Brahmin as a citizen ; as regards civil rights, no such forfeiture was caused, as under the principle of

1 पङ्कमचानन न्यायः ।

2 नहि हृष्टे अज्ञपन्न नाम इति न्यायः ।

3 ब्राह्मचर्यमथ न्यायः ।

Abraham *versus* Abraham. The maxim is used by the authors of the Kavya Prakāsha and the Sahitya Darpana.

(34) The maxim that a word signifies the thing signified.¹ This maxim literally means that the meaning of a word partakes of the character of the thing to represent which it is employed. But in an extended sense, the maxim means that a work is authoritative on the subject it purports to treat, and not on any collateral subject. The instance given by Vijnānbhikṣu is, that Sāṅkhya Sūtras, the object of which is to show the means of relieving misery, have no authority regarding the subject of the Supreme Being.

(35) Where both the opposing sides are equally objectionable or equally blameless, the go-by should be given to both of them.²

The utility of this maxim is not so great in the Mimāṃsā Darśhana as in the Vedānta Darśhana ; for, in the former the object is decision, in the latter elimination. In the Mimāṃsā where two Vidhis happen to be in conflict, there must be Vikalpa or option.

(36) The maxim of the conch-shell and the hour of the day.³

This maxim is of equal importance to the subject of interpretation as to logical argumentation. Jaimini's principle of Krama (order of sequence) corresponds with this maxim. Raghunandana's application in

1 यत्परशब्दः स शब्दार्थः इति न्यायः ।

2 यत्रोभयः समोदोषः तत्रोभयोः न्ययोज्य इति न्यायः ।

3 शङ्खशिला न्यायः ।

Malamasatattwa illustrates its exegetic value. The meaning of the expression conch-shell and the hours of the day is that, as the conch-shell is blown according to custom at certain hours of the day, these hours are indicated by the blowing of the conch-shell.

(37) The maxim of showing the nose by moving the hand round the back part of the head.¹

This maxim means that when an easy word and direct course are available, an indirect and far-fetched course should not be adopted. This corresponds to Arkamadhu Nyaya noticed before.

(38) Nearness of position is not nearness in sense.²

This maxim is to the effect that it is not juxtaposition which determines the nearness of relation of clauses. Clauses though distantly situated may yet be connected by one verging to the other. This Naiyaik maxim is identical with the Mimânsâ maxim on the subject.

(39) The maxim of 'nearer the better.'³

It means where a construction with a nearer clause is as good as with a more distant clause, the nearer should be preferred.

(40) The maxim—Take all of a group on an equal footing.⁴

It means that when two or three substantives occur together, such as Ghatpata (the cup and the portrait),⁵

1 शिरोवेष्टनेन नासिकास्यर्श इति न्यायः ।

2 ननिहितोऽपि व्यवहितं साक्षाद् वक्ष्ये इति न्यायः ।

3 ननिहितं बुद्धिरन्तरङ्गमिति न्यायः ।

4 समुदायसम्बन्धेन न्यायः ।

5 घटपट न्यायः ।

one should not be taken as qualifying the other, but both as independent substantives. By this maxim it is directed to construe a compound word as Dandwa-samâsa¹ where this is possible rather than to construe it as any other Samasa.

(41) The maxim that which forms the quality of one thing may be the quality of other things.²

As for instance, Shwetashankha (the white conch-shell), but other things than a conch-shell may also be white. This maxim, in fact, is identical with Mitha-asambandha Nâya³ of the Mimansa Sûtras.

(42) The maxim—when invited all must be equally attended to.⁴

This maxim applies where to a number of nominative clauses there is one common predicate, that predicate must be applied equally to all the clauses.

(43) The maxim that where there are two Vidhis, one of a wide and vague scope, and the other definite and limited, the latter should prevail.⁵

This exactly corresponds with Jaimîni's Samanya Vishesha Nyaya.⁶

Besides the maxims mentioned above, the following are referred to in Savara Swâmi's book.

Bhumiradhika Nyaya⁷ has been twice mentioned by

1 दण्ड समासः ।

2 सर्व्वविशेषेण साधारण्यम् इति न्यायः ।

3 मिथ असम्बन्धः न्यायः ।

4 सर्व्वापेक्षा न्यायः ।

5 सावकान्निरवकाशयोर्मध्ये निरवकाशं वक्तव्यम् इति न्यायः ।

6 सामान्य विशेष न्यायः ।

7 भूमिरधिक न्यायः ।

Savara in VII. ii. 15 and IX. ii. 13 ; Shakunigrahakagati Nyaya¹ mentioned by Savara in IX. i. 22 ; Shushkesti Nyâya² mentioned by Savara IX. ii. 13 ; and others.

There are some popular maxims however, which are, as already observed, mere expressions of wit or sarcasm or the like. These also may be welcome to a lawyer in forensic discourses in connection with questions of fact, and may be well resorted to in addressing a Jury. My treatment of the subject would be incomplete without a few examples of this class of sayings. So I would mention to you the following.

Maxims expressing wit or sarcasm.

The maxim of 'half and half.'³

This maxim embodies the story of the Brahmin who was eulogising his cow offered for sale, as being one of mature age, but who finding that that was not inviting to the purchaser, next day described it as being verily a young animal though old in spirit.

(2) The maxim—Discussing the selection of an auspicious moment after the thing has already been done.⁴

(3) If the blind lead the blind, both will fall into the ditch.⁵

(4) Proclaiming the name of a son before he is born.⁶ This corresponds to the English proverb, 'counting your chickens before they are hatched.'

1 शकुनिग्राहकगतिन्यायः ।

2 शुशकेष्टि न्यायः ।

3 अर्धजरातीय न्यायः ।

4 कृते कार्यं किं सुदुर्लभमेव इति न्यायः ।

5 अन्धस्तेषां अन्धस्य विनिपातः पदे पदे ॥

6 अजात पुत्रनामोत्कीर्तन न्यायः ॥

(5) The beggar planting his footing,¹ corresponding with the English maxim, 'give him an inch, he will take an ell'.

Principles of
interpretation other
than maxims.

Now in this connection I shall give you some popular principles of interpretation other than maxims which authors of discursive writing observe or are supposed to observe.

(1) When, in order to establish any particular proposition several reasons are given in successive clauses, each successive reason being preceded by such words as *kincha*, *yadva*, *va*, then the reason last given is to be accepted as the correct one in the opinion of the author. This principle means that all the reasons except the last are more or less in the nature of what is called in modern legal language *obiter dictum*.

(2) Where, however, several alternative propositions are propounded in the same sentence with the word *vā* (or) without any indication of a conclusion, it is to be understood, that the author does not approve any of them.

(3) If two reasons are given in the same clause for any particular proposition, the reason last given is taken as being merely corroborative (*Sādhaka*², just as Jaimini often uses such words as *Darshanāt*,³ *Lokavat* (from observation as with worldly people)⁴, although according to his own philosophy, matters of perception or personal knowledge cannot be relied upon, in discussing what is *Vidhi* and what is not a *Vidhi*.

1 भिक्षुपादप्रसारणं वायः ।

2 साधक ।

3 दर्शनात् ।

4 लोकवत् ।

Section II. Explanatory observations on the foregoing maxims.

I have given you a running view of some of the popular maxims. Their character and rationale may be better understood if you consider what are called the *Mimāṃsā Pramāṇas* (means of proof) in connection with them. The *Mimāṃsā* philosophy recognises seven *Pramāṇas*. One school recognises only six. The seven *Pramāṇas* are as follows :

*Mimāṃsā
Pramāṇas.*

- (1) *Shabda* (Revelation).
- (2) *Pratyakshya* (Direct sensual perception).
- (3) *Anumāna* (Inference).
- (4) *Upamāna* (Illustration by Simile).
- (5) *Arthapatti* (Irresistible conclusion of the truth from a combination of facts).
- (6) *Shishtachāra* (conduct of wise men).
- (7) *Abhāva* (*Reductio ad absurdum*).

Some of these *Pramāṇas* apply to the subject of interpretation. I shall explain to you the bearing of these on the question of interpretation. *Shabda Pramāṇa* corresponds to the *Sruti* principle where the intention of the text is obvious and manifest. Where, however the true intention and purpose of a text has to be made out by inference or by analogy, this would be a case of either *Anumāna Pramāṇa* or *Upamāna Pramāṇa*.

The popular maxims are mostly instances of *Anumāna* and *Upamāna*. In other words, they bear upon the subject of interpretation by inferential reasoning, and by analogical process. Kumarila Bhatta explains very fully the method followed in these two processes. In fact, every branch of knowledge is pursued more or less by the aid of inference and analogy. The

facts and laws scattered over in the wide domain of the physical as well as of the moral and intellectual world have their counterparts in every special subject of enquiry. As in other branches of knowledge so in the subject of interpretation, the facts and laws of the wide physical and the moral world are utilised. In cases of difficulty arising with reference to the interpretation of a text or passage by recalling to mind some natural law or some physical law or moral fact, the interpreter is enabled to solve the difficulty.

**Scope and
meaning of
popular
maxims.**

A popular maxim is the condensed expression of some natural or moral fact or law embodied in a saying which is current among the people concerned. These sayings are sometimes in the form of an abstract proposition. But mostly they are in the form of a striking fact or of an illustration of some kind of expediency. The first nine maxims given before are all in the nature of abstract propositions and are of a technical nature, directly bearing on the subject of judicial interpretation. They are of the same nature as the general maxims of the Roman Law, mostly you will find them in the corresponding maxims of the Jaimini Sutras.

**Maxims
explained.**

The first maxim 'a thing, once done fulfils the Shâstra' is of very great practical importance in applying the texts of the Shâstra. And it is very frequently referred to in the works of commentators on the Smritis. The second 'a word once pronounced must have one meaning,' is also of vital importance to the interpretation of law. It is in fact an axiom of interpretation. You have already seen how Jimutavahana utilizes it. The third maxim - 'more words more meaning' is the keynote of the principle of literal interpretation.

The fourth—‘As far the expression so far the sense’ is virtually to the same effect. The fifth ‘Fifty in a hundred’ appears to be a provoking truism. Probably, it has been put in this form to make it more attractive. The Roman form of it ‘the greater includes the less’ is more familiar to us. The sixth ‘He who causes to be done himself does’ and its Roman counterparts are well-known. The seventh—‘Popular usage overpowers the etymological meaning’ is included in Jaimini’s *Padārtha Prābalya* maxim, and every lawyer is familiar with its Roman counterpart (the usage is the best interpreter of things). The eighth ‘Statement alone is no proof,’ is another universal maxim. The ninth—‘One proposition being possible two should not be made of it’. This maxim, among others, shows how popular maxim agrees with Jaimini’s maxim.

There are some other maxims which are of the nature of general abstract propositions such as no. 12, no. 19, no. 32, nos. 34, 35, 38, 43, etc.

Another class of maxims are based on considerations of expediency where owing to a difficulty in a text or passage, the interpreter is in a fix. These maxims point out to him the course which is expedient. As instances of this class I may mention the following.

‘The honey and the Arka plant’ maxim (no. 22). It is to the following effect.

‘If you can find honey in the Arka plant which grows in your yard, no need of going to the mountains in quest of the bee-hives.’ To the similar effect is the maxim no. 37) ‘showing the nose by moving the hand round the back part of the head’.

These maxims suggest that when a difficulty arises,

the shorter way to its solution should be adopted in preference to a longer one. Maxims of this sort are in the nature of directions to the interpreter.

There is a third class of maxims which are serviceable to clear up the meaning of a text by showing its analogy to some particular trenchant facts or to some striking truth. They are more or less in the nature of Upamâ (simile). The following are some instances of this class of maxims.

The maxim of 'eating from the brazen vessel'. I have already shortly explained this maxim. It occurs in the chapter of Tantrata in connection with the question whether where there is a primary duty, and also a derivative duty, both having the same purpose, the derivative should be ignored. The decision is 'No'; both the duties have equal claims and there is no conflict between them.

The maxim of the 'larger fish eating the smaller,' the maxim of the 'mango-tope', the maxim of the 'wristlet of the wrist', the maxim of the 'crow and the curdled milk,' the maxim of 'the staff and the cake' etc., are all maxims of this class. These are all of a peculiar character. So, although I have given brief explanation of them to make them familiar to you, I shall make some short additional remarks in their relations to each other.

The maxim of the 'lamp on the threshold' should be considered with reference to that regarding the non-splitting of a sentence into two propositions. The latter favours construction by which one thing is to be taken as intended at a time; the form favours a double purpose. But the two are not contradictory. A sentence

may well be read as embodying one idea in the main, and at the same time, it may be construed so as to serve a double purpose. A proposition may be one, but may serve different purposes.

Then the maxim of 'the larger fish eating the smaller', and that called the 'Sâmânya Vishesha' (the general and particular), should be distinguished from each other. By the latter maxim when there are two propositions, one general and the other particular, the particular supersedes the general. But in the case of the fish maxim, in case of a conflict between a principal proposition and a subordinate proposition, the latter should be ignored. Obviously there is no inconsistency between the two maxims. For in the case of the maxim regarding the general and the particular, both propositions are affirmative, while in the case of the fish maxim one is affirmative while the other is of a negative character.

The 'mango-tope maxim' is identical in effect with the Prâ nabhrîta maxim which has been explained with reference to the subject of Linga.

The maxim of 'the crow and the crudled milk', and that of 'fetching water' are analogous, but are not identical. In the case of the former a narrow expression is to be taken in a comprehensive sense. But in the case of the latter, when a purpose is indicated, all its incidents are to be implied.

The maxim of the 'wristlet of the wrist' and that called 'the Brahmin and the holy traveller' have some points of resemblance. In the expression wristlet of the wrist, the latter word wrist is seemingly superfluous. But in order to give it a meaning it is to be taken as

indicating the fact that the ornament of the wrist is actually being worn on the wrist. In the expression, 'Brahmanas and holy travellers', the latter word includes the former and its use is justified as emphasising the same sense. This maxim is identical with the one named 'the cattle and the bull'.

The maxim of the 'staff and the cake' (Colebrooke's translation of Dandapupa Nyâya), and the maxim called Kaimutika (what after) are to the same effect. Both indicate cases in which one thing being established another is established *a priori*.

Three fixed
rules of guid-
ance for
writing
treatises.

Before concluding this lecture I should acquaint you with certain fixed rules which are popularly recognised as the proper guides for writing treatises.

An author writing a treatise in an orthodox manner is expected to fulfil the following conditions.

(1) That he should begin with a Mangalâchara (benediction and prayer). Generally it is accompanied by an indication of the subject and the name of the treatise. This is the substantial part of it.

(2) That the subject should be of a defined and clear nature. This is called Vishaya.

(3) That it should have a clear object and purpose for treating the subject. This is called Prayojana.

Sometimes in the place of Mangalâchara (benediction and prayer) Pratijna or the enumeration of the object and the purport is substituted. Thus modified the three-fold division of the subject matter of a treatise or Shâstra, legal or otherwise, is of great use to the interpreter. In fact, the Prakarana principle of construction, and to some extent the principle of Linga, are worked out in some cases from the Pratijna

and Prayojana. Many of the popular maxims, too, which I have presented to you, are utilisable with reference to this three-fold aspect of a written work. If one knows the subject and object of a work fully, he knows how to apply the principles of Prakarana and Linga in construing its passages. He is also in a better position then to determine to what class of maxims, popular or otherwise, he has to look to in order to solve any difficulty.

Section III. Some other popular maxims.

Before concluding this lecture I would mention a few more popular maxims found in Colonel Jacob's book :

(i) *Swāngam Swavyabadhāyakam na bhabati.*¹

"Own's own body does not hinder one."

Maxims described by
Colonel
Jacob.

What on the face of it constitutes an accessory to an idea should not be taken to contradict that idea.

(ii) *Sthunānikhanan Nyaya.*²

"How to dig earth by a post."

If a position is to be made out circumstantially, you must bring forward a succession of facts and arguments, as it is only by repeated hammering that one may dig a hole by a post.

(iii) *Sthālipulaka Nyāya.*³

"Test one rice in a boiling pot."

Of many similarly circumstanced things of one and the same description, if one is found to possess a certain quality, the rest may be taken to possess it.

(iv) *Shuchikataha Nyaya.*⁴

1 स्वाङ्गं स्वव्यवसायकं न भवति ।

2 स्थुणानिखननन्यायः ।

3 स्थालोपलकन्यायः ।

4 सूचीकटाहन्यायः

"Having to deal with the needle and the boiler."

If one is called on to solve a simple and a hard question at the same time, let him first despatch the first.

(v) *Sinhabalokana Nyaya.*

"A lion's glance - At one glance backward and forward like a lion."

When a matter shows itself connected with what precedes and what follows, one must take them into consideration at one glance.

(vi) *Swashrurnirgachhokti Nyaya.*¹—The mother-in-law who said, "Be off."

'Abusing another for what one himself does with a vengeance.'

The mother-in-law abused her daughter-in-law for refusing to give alms to a mendicant and called him back to tell him, "There are no alms, be off."

(vii) *Shringagrâhikâ Nyaya.*²

'Seizing oxen by their horns.'

As a man disables a bull by catching hold of his horns, so if one takes the most seemingly antagonistic passages first and shows that they are not antagonistic, then he gains his point easily. For instance, in the *Vecânta Darshana*, *Srutis* like 'Prana is Brahman', 'Uktha is Brahman' are first examined and interpreted.

(viii) *Shirashchhedepi satam na dadâti vinshâti—panchakam tu prayachhatiti Shâkatika Nyâya.*³

'The carter who would be beheaded rather than pay a hundred, but will at once pay five score.'

1 ननुनिगच्छीतिन्यायः ।

2 शृङ्गाग्रहिकान्यायः ।

3 शिरश्चेदपि शतं न ददाति विंशतिपञ्चकं तु प्रयच्छतीति श्राकटिकन्यायः ।

To many people the thing is not of so much importance as its name and the form in which it is presented. With one name they will accept it, with another name they will reject it.

(ix) *Vriddhimishtabato mulamapi te nashtam.*

'Whilst seeking to obtain interest, the creditor loses (that and) the capital too.'

This maxim does not require any explanation.

(x) *Vriddhakumārivākya Nyāya.*¹

'The request of the old spinster.' An old spinster asked of Indra to grant the blessing that her son may eat from a metal plate milk, rice and sugar. Thus the old maid by this request asks for a husband, the birth of a son, rice and milch cow &c. This is applied to cases in which a sentence has an involved meaning importing a variety of things.

(xi) *Vishakrimi Nyāya.*²

'Worms thriving in poison.'

The maxim corresponds to 'what is one man's food is another man's poison.'

(xiii) *Varam śānshayikānni śhādasāmshayika karshāpana.*'

'Better is a certain Karshāpana than an uncertain Nishka.'

This is equivalent to the saying 'A bird in the hand is worth two in the bush.'

(xiii) *Mānādhina meyasiddhi.*³

1 वृद्धिमिष्टवतो मूलमपि ते नष्टम् ।

वृद्धकुमारौ वाक्यव्यायः ।

2 वरं सांशयिकान्निदादसां शयिकः कार्षापणः ॥

3 मानाधीना मेयसिद्धिः ।

'To know the thing to be measured you must know the measure.'

This indicates a principle of practical logic.

(xiv) *Maddhyadipikā Nyāya*.

'The lamp in the centre.'

'The idea is of a lamp shedding light on both sides. When a term has a double connection with both the presiding and the following clauses after the manner of a lamp placed in the door, then this maxim is applied according to the explanation of Prof. Gough.

(xv) *Mandukapluti Nyāya*.

'The maxim of a frog's leap.'

Used by grammarians and others to express the passing from one rule to another over intervening ones. The St. Petersburg Lexicon gives references to its use in the commentary on Pāṇini 1. 4. 47 (in the old Calcutta edition of 1810), and in the Siddhānta-kaumudī on Pāṇini 5. 1. 117.'

(xvi) *Vijānkura Nyāya*.¹

'The maxim of the seed and the shoot.'

As the seed produces the shoot, so the latter in turn reproduces the former. Each therefore is a cause and an effect. The maxim is met with very frequently in the literature. We find it in Brahmasutrabhāṣya 2. 1. 36.'

(xvii) *Pradhānamallānirvāhana Nyāya*.²

'The maxim of the destruction of the chief antagonist.'

The principle that when the most formidable!

¹ बीजाकुर न्यायः ।

² प्रधानमल्लनिर्वहण न्यायः ।

enemy has been defeated, the less formidable are already virtually overcome.'

We find it referred to in the Bhâshya on Vedânta-sutra 1. 4. 28.

(xviii) *Pishtapeshana Nyâya*.¹

'The maxim of the grinding of that which is already ground'.

Fruitless reiteration, unproductive repetition. We find it in Sankara's Bhâshya on Kena-Upanishad 32.

(xix) *Pâtachcharalunthite besmani yâmikajâgaranam*.²

'The vigilance of the watchman after the house has been plundered by thieves.'

Equivalent to the English proverb "shutting the stable door after the horse is gone." It occurs in Kandanakhandakhâdya, page 45.

(xx) *Ghattakutiprabhâta Nyâya*.³

The maxim of daybreak in the vicinity of the toll-collector's hut.

'A man, anxious to avoid paying toll, takes another road, but losing his way in the dark, finds himself at daybreak, in the vicinity of that very toll-gate. The saying is employed to illustrate *Uddeshyasiddhi*,⁴ as Professor Cowel puts it; that is, failure to accomplish a desired object. It occurs in the Panini section of Sarvadarsanasangraha.

(xxi) *Gaganaromantha Nyâya*.⁵

1 पिष्टपेषण न्यायः ।

2 पाटञ्चरकुण्ठिते बेस्मनि यामिक जागरणम् ।

3 घटकुटीप्रभातन्यायः ।

4 उद्देश्यसिद्धिः ।

5 गगनरोमन्थनन्यायः ।

'The maxim of ruminating on ether. Equivalent to beating the air. It is found twice in the *Sarva-darsanasangraha*.'

(xxii) *Kupamanduka Nyāya*.¹

'The maxim of a frog in a well.'

It is applied to an inexperienced person brought up in the narrow circle of home, and ignorant of public life and mankind.

(xxiii) *Kāshakushaḥvalamvana Nyāya*.²

'The maxim of catching at straws.

Being driven to an argument or position wholly untenable.

Prof. Cowell has rendered it "like a drowning man's catching at straws."

(xxiv) *Kākakshigolaka Nyāya*.³

'The maxim of the crow's eye-ball.'

Crows are popularly supposed to have only one eye, which, as occasion requires, moves from the cavity on one side into that on the other. The maxim is used of a word which appears only once in a sentence but which applies to two portions of it ; or to persons or things fulfilling a double purpose.

(xxv) *Kakatāliya Nyāya*.⁴

'The maxim of the crow and the palmyra fruit.'

A crow alighted on a palmyra tree, and at the same moment some of the fruit fell on its head and

1 कुपमन्दुकन्यायः ।

2 काशकुशावलम्बनन्यायः ।

3 काकाक्षिगोलकन्यायः ।

4 काकतालीयन्यायः ।

killed it. The maxim is therefore used to illustrate a startling and purely accidental occurrence.

(xxvi) *Akāshamushtihanana Nyaya*.¹

'The maxim of striking the sky with one's fist.'

A vain attempt at an impossibility. It occurs in the Jaimini chapter of Sarvadarsanasangraha (page 133 of Bib. Ind. Edition, and p. 151 of Jivānanda's).

(xxvii) *Astramastrena śāmyati*.²

'A weapon is silenced by a weapon.'

Perhaps analogous to the saying, "Like cures like," or "set a thief to catch a thief."

It occurs in Jnānottama's commentary on Suresvara's Naishakarmyasiddhi 1. 81.

(xxviii) *Ajākripaniya Nyāya*.³

'The maxim of the she-goat and the sword.'

It is founded on some story of a goat's being suddenly killed by accidental contact with a sword, and is used to illustrate any surprising event happening altogether by chance. It therefore belongs to the same class as Kākatāliya, *Khalvātaviluiya* and others of a similar kind.

(xxix) *Abayabashakte samudāyashaktirvaliyasi*.⁴

"The strength of a community is greater than that of a member of it. Equivalent to 'Union is strength.' It occurs in Kāvya-pradīpa, page 388."

(xxx) *Artho samartho Viddhānadhikriyate*.

'He has the right who has the want, the power,

1 आकाशमुष्टिहानन न्यायः ।

2 अस्त्रमस्त्रेण शाम्यति ।

3 अजाकृपाणीयन्यायः ।

4 अवयवशक्तेः समुदायशक्तिर्वलियसी ।

and the wit.' This Nyâya is found in the Jaimini section of Sarvadarshanasangraha.

"Professor Cowell translated it thus:—'According to the old rules, he has the right who has the want, the power, and the wit,—those who are aiming to understand certain things, as the new and full-moon sacrifices, use their daily reading to learn the truth about them.'"

(xxxix) *Vadhyaghâtakâra Nyaya*.¹

'The maxim of the destroyer and its prey.'

It occurs in Taittiriya-Vârtikâ 2, 1. 66 (page 53.)

(xl) *Karavinyastavilwa Nyaya*.²

'The maxim of the woodapple on the [open palm of the] hand.' Said of something unmistakably clear.

"As plain as a pike-staff."

It occurs in Vârtikâ 2. 1. 95.

1 वध्यघातकार न्यायः ।

2 करविन्यस्तविल्वन्यायः ।

LECTURE VIII.

THE MIMANSA RULES OF INTERPRETATION AS APPLIED TO AND AS APPLIED BY DIGEST WRITERS.

Jaimini says, 'independently of any consideration of reason, that which has been in vogue must prevail.' This Mimânsâ principle not only establishes the authority of customs but also shuts the door against disputing the authority of digests and commentaries, such as Jimutavâhana and Mitâksharâ, whose authority has been accepted and acted upon by the different communities professing to be led by them for centuries. What they have taught has acquired at least the authority of customary law. Their Lordships of the Privy Council, unconsciously reiterates the above mentioned Mimânsâ principle in favour of the authority of current customs and of current legal treatises in the *Collector of Madura v. Mathu Ramlinga Sathupathy* (10 W. R. P. C. 21).

Thus the writings of Jimutavâhana and Vijnâneswara are among other legal treatises the proper object of interpretation. So it is necessary, in the first place, to know on what lines they proceed in developing the Hindu Law of property ; and then in the second place, it will be necessary to see how these authors themselves handle the Mimânsâ principles of interpretation in the course of their work.

The state of
things before
the digest.

The usually accepted view is that in the earliest stage of the Indian society there was no conception of the idea of individual property, but property was only conceived as a matter of corporate right, that is, as a matter of family or clan dominion. On a closer attention to the subject, however, it will appear that regarding the institution of property as it existed in the very ancient days of India, it is very hard to say whether it should be called a corporate right or an individual right. The Smritis taking them as a whole, accurately and faithfully describe facts as they existed.

These facts were as follows :—

In a family consisting of a father and sons and of the wife of the one and mother of the others, the father had dominion over all that belonged to the family, whether got from a deceased ancestor or acquired by himself. But if the father had dominion over it, the sons and the wife had an undoubted interest in it at the same time. They were to be maintained out of it, and, from the nature of things, they had to contribute to the preservation and augmentation of it.

The modern idea of property consists of the idea of exclusive dominion and of exclusive use, either exercised by individuals separately, or a number of individuals together forming a corporate unit. But facts, as they existed in the ancient Hindu society, do not justify the formulation of individual or of corporate right of property. They indicate a vague idea of a trust, of which, however, there was no *cestu que trust* properly so called. For, the possession of property by the family was not only for the interest of the living members, but also of those who had departed from this

life and those who were yet to come. Property in the modern sense of the term could not be asserted, either of the father or of the other members of the family, jointly or severally, according to the state of things which existed.

Ancient and modern conception of property.

No doubt, there was a sort of right of the whole family to the property as contra-distinguished from the claims of any other family. One family could not interfere with the property of another family. In this sense, there was family property, partly fulfilling the modern idea of property. But still there was no definite rule as to the manner in which the right of the family as a unit was to be exercised.

The Smritis show that, though usually the father represented the family to the outside world, it was not always so. Then, as regards the brothers, the Smritis also indicate the same uncertainty. For, although, generally the eldest brother was declared to have the managing power almost as a matter of right, but that was not universal. The fact appears to be that the relations of the parties were adjusted according to the circumstances of each case. So, as regards the members of a family, as among themselves, the conception of property in its modern sense was not realized. Fortunately questions of internecine claims, as among the members of the family, scarcely arose in those times.

At any rate, if such questions did arise, they had to be settled not by constituted courts as in recent times, but by local assemblies; in other words, they were settled not by persons having the character of judges but popular bodies who acted practically as jurors. It is the judge who requires nice distinctions of general

General principles of law evolved gradually.

principles of law to settle a question ; but a jury, when it is both the judge of law as well as of facts, requires no such distinctions. The Jury does justice as in each case it deems proper. Even when the king's courts were constituted as described in the Introductory Lecture, the Brâhmin assessors, who practically served the same purpose as a jury, had to decide questions of law. Their decision must have been, as one may easily see, guided by the circumstances of each case. Thus one can very well understand that the undefined condition in which the rights of the members of a family are left by Manu, Gautama, Yājñavalkya, &c., did not cause any practical inconvenience to the cause of justice. But it would appear that, with the advent of the Bauddha rule, the system of Brâhmin assessors had ceased. Accordingly, in the place of the undefined law of property, definite rules and principles were called for. And while, on the one hand, there was this demand for precise judicial principles, on the other hand, the Jaimini Sutras had furnished a body of such judicial principles. Further, the study of the system of logic founded by Gautama had created a spirit of analysis and generalisation which could not rest satisfied with the vague and defective texts of the Smritis, respected and revered as they were. Hence with the influx of the Bauddha influence came into existence works like that of Mitâksharâ, and subsequently other works, among which, Jimutavâhana's Dâyaabhâga has a leading place.

The above will enable one to understand the extraordinary acumen and logical clearness exhibited by Vijnâneswara and Jimutavâhana in evolving general principles of the law of property, which bear an

impress of juridical analysis which may well compare with juridical principles of the present day.

**Section I. Departure taken by the Digest writers
in different directions.**

According to the Smritis the idea of inheritance and succession was not at all developed. It was the rules of partition that were made to serve the purpose of the principle of succession and inheritance. Vijnâneswara and Jimutavâhana had to start with this traditional mode of dealing with the subject. In the Smritis there was the topic of partition, and these jurists accepted this topic to settle the general principles of the law of property including rules of succession and inheritance and of partition also, the last becoming with them merely an incidental matter, though to all appearance, they gave it a prominent place. But the principles of succession and inheritance were not uniformly adopted by the two jurists. According to Mitâksharâ, there is no succession and inheritance as regards a son and grandson with reference to the property left by the grand-father. With regard to the sons and the grandsons in relation to the grand-father's immovable property, the right of the members of the family is, generally speaking, like the rights of the members of a corporation, the membership of which accrues by birth. But subject to this, he distinctly acknowledges the right of inheritance and succession as regards other kindred and relations. This is a sort of compromise between the principle of corporate right and the principle of the right of individual succession and inheritance. Jimutavâhana, however, does not

Principles
of succession
and inherit-
ance how de-
veloped.

accept this compromise. He settles the question all in one way.

Different
views of Vij-
naneswara
and Jimuta-
vabana re-
garding suc-
cession and
inheritance.

But it ought to be said here that if the Mimāṃsa principles were strictly applied, probably the view taken by Vijnaneswara would be better borne out by them than that of Jimutavahana ; for, in Adhikarana 1, Ch. ii, Bk. vi, Jaimini lays down the principle that every member of a family who joins in the family worship, has the full benefit of that worship. In other words, according to Jaimini, of the two, the father and the son, each gets the full benefit of the properties offered as sacrifices. By analogy from this, it might well be said that each member of a joint Hindu family consisting of a father and sons, was jointly with the rest, owner of the whole of the family property. Jaimini includes the wife also as a member of the family and as a participator of the benefit of the worship. Vijnaneswara, however, does not avail himself of this argument, and the reason is plain. He does not admit any connection between property and religious sacrifice. Vijnaneswara discards the idea of property being an offshoot of religious ceremony. He gives, among others, this short reason that, the performance of religious sacrifices presupposes the idea of property with which to perform the sacrifice. He maintains that the conception of property consists mainly of a sense of worldly utility. Vijnaneswara supports his position by appealing to the authority of Jaimini who has throughout differentiated worldly interest from the spiritual interest ; although throughout he has held that worldly utility is not incompatible with the spiritual mission of man. In fact, it appears that, those conservative

writers who hold property to be spiritual, do no more than regard the institution of property to be ultimately traceable to the supreme spiritual command enjoining the attainment of heavenly bliss.

To return to the question of the law of property as determined by Jimutavahana. He refuses to recognise the juridical position of the family as a natural corporate body, the membership of which accrues by birth and in which the right of survivorship obtains. He, in fact, evolves the principles of succession and inheritance by excluding the principle of acquiring rights by birth. To prepare the way to his theory he first takes up the subject of transfer of property and maintains that a transfer takes place, so far as the transferor is concerned, by a declaration of his intention to part with his property in favour of some one having sentiency; and that it is not necessary that the person in whose favour the property is parted must accept it immediately, his acceptance being only an act of availing of the right given to him. Jimutavahana founds this definition of transfer on sacrificial acts by which a votary gives up his rights to a thing in favour of the gods, the priest utilising the effects of the gift by availing of the use of it, if practicable. He, the priest, avails of it as benefiting the votary; that is, the giver in connection with the sacrifice. In this way, Jimutavâhana, by treating the right of succession and inheritance as analogous to the right by gift, connects the right of succession and inheritance with spiritual benefit to the person whose property is to pass. This principle forms the leading principle of the Dayabhaga, while the principle of the family corporation as

The principle of spiritual benefit and that of family corporation, as advocated by Jimutavahana and Vijnaneswara respectively.

described above constitute the leading principle of the Mitakshara.

One of the acknowledged principles of the Mimânsâ system is, that in order to interpret a book its guiding idea must be got hold of to serve as the key of understanding it. So the above principles of the two books should be remembered in interpreting their details. Neither the Mitâksharâ nor the Dâyaabhâga goes the whole way to meet the present requirements of the communities respectively governed by them. Besides, they are not exhaustive and complete even so far as they go. New points and new questions arise which require decisions. The settlement of such points and questions can be easily effected by the principles of the Mimânsâ Sûtras.

Section II. How the Mimansa principles are to be applied to the texts of the Digests.

Now, in order to see how the Mimânsâ Sûtras would apply to these works, the first step is to examine how the authors of these works themselves applied these Sûtras to the Smritis. Having ascertained this, we can well follow their own example in applying the Sûtras to their works. If they sharpened the knife, it can be better employed to dissect their own productions. As already indicated the crucial point of difference between Vijnaneshwara and Jimutavahana as regards the law of succession and inheritance lies in their varying conceptions of what constitutes proprietary right.

There is the Gautama Sûtra "An owner ^{is} by inheritance, purchase, partition, seizure or finding ^{his} ^{is}."

(1) स्वामी रिक्कयसंविभागपरिग्रहादिगतेषु..... । Gautamian

It appears that the two schools, one headed by Vijnaneshwara and the other by Jimutavahana, read the above text differently. The school of Jimutavahana apparently takes it that in each of the sources of ownership *viz.*, by inheritance, purchase, partition, seizure or finding, there must be an ethical element to complete the valid acquisition of proprietary right. That ethical element is that, in each case the act must be in fulfilment of *dharma* (duty) and not in violation of it. According to this school, inheritance &c., are not mere physical events, but involve a moral or religious element in them. And as regards the additional modes for the three castes respectively, they are on the lines of their *Barna dharma* (caste duties). So, according to this school, the principle of proprietary right is to be sought in teachings of duty (*dharma*).

Different interpretation of Gautama sutra by Jimutavahana and Vijnaneshwara, though both rely upon Mimamsa sutras-

Vijnaneshwara's school would read the words inheritance, purchase, partition, seizure or finding as mere physical events which are invested with the sense of proprietary right by the voice of the people. The former school argues, that if proprietary right were a physical matter then how could one say 'he has wrongly usurped my property', and why could not one ascertain what was one's property by merely seeing the thing, as one distinguishes one metal from another? The latter school would answer that the idea of proprietary right accrues by popular acceptance and by that alone. However, it is not of so much importance to us now as to what the views of Vijnaneshwara and Jimutavahana are on the subject, as the fact that both rely on the Mimamsa principles mainly in support of their views.

Vijnaneshwara relies on Jaimini's Lipsa Sutras, as he calls the 3d. Adhikarana of chapter I. Book IV. Jimutavahana rests his arguments on the principle of Pratipatti Karina which Jaimini treats of in the succeeding chapters of the same book. Now let us see Vijnaneshwara's arguments. Adopting Guru Prabhakara's interpretation of the Lipsa Sutras, he reads the third Sutra as follows : "The use of property in sacrifices is a matter of the man ; if there could be nothing besides the effect of sacrificial precepts, then there would be no property, for sacrifices presuppose property ; this being so, rules of gift, acceptance &c., have been propounded as guides to men."¹ He reads the fourth Sutra as follows. "These rules of gift, acceptance &c., are not to be distinguished from the Sruti ; if they be violated, the sacrifices would be fruitless."²

These two Sutras are Purvapaksha (statements of the objector). The decision which is in the fifth Sutra is read as follows : "Whether the property was acquired in the prescribed methods or not as this question does not affect the purpose of a sacrifice, the use of the property (either way acquired) does not invalidate a sacrifice."³

The last Sutra of the Adhikarana is read as follows :
"So it is by popular recognition".⁴ Vijnaneshwara's,

(1) तदुत्सर्गे कर्त्तुं पुरुषार्थाय शास्त्रस्यानतिशङ्कालात् च द्रव्यं चिकीर्षते
तैर्गार्थेनाभिसंबन्धात् क्रियायां पुरुषश्रुतिः । Jaimini. IV. i. 3.

(2) अवशिष्टात् शास्त्रस्य यथाश्रुति फलानि स्युः । Jaimini. IV. i. 4.

(3) अपि वा कारणावच्छेदे तदर्थमर्थस्याभिसम्बन्धात् ।

Jaimini. IV. i. 5.

(4) तथाच लोकश्रुतेषु ।

Jaimini IV. i. 6.

comments on the Sutras are found in his book. The translations by Colebrooke are, however, not very clear. Colebrooke is further mistaken in taking the word Guru which stands for Guru Prabhakara as meaning the venerable author.

Vijnaneshwara argues from the above that according to Jaimini, the conception of property is essentially a matter of popular recognition. He says the objector and the final decisionist admit this proposition. The only difference between them is this. The objector says that a breach of the Shastras as to acquisition of property, makes the property acquired by such breach unfit for an efficacious sacrifice, while the decisionist denies this. Jimutavahana does not controvert the general proposition that a mere moral precept, such as Purusha dharma is, does not override the Vyavahara law as settled more or less by popular recognition. What he denies is, that the conception of property is void of ethical considerations and consist of physical acts merely. According to him popular recognition is no doubt a factor of the conception of property, but it must be such as to be ultimately justifiable by the consciousness of Dharma (duty) as enjoined by the command 'Swarga kamo yajeta.' The chief factor of the conception of property, in his view, is the ethical factor. He supports this view by referring to the case in which right of property accrues to the priest in the remnants of offerings, not because the priest accepts them, but because the votary offered them to the gods with pious devotion. He points out that here the worldly part of the thing is the appropriation by the priest, but that is not the cause of the

Conception
of property
according to
Vijnaneswa-
ra and Ji-
mutavahana.

proprietary right he acquires. This is merely a Pratipatti Karma (incidental action). The real cause of the transfer of the proprietary right is the pious mental action of the votary.

The above discussion between the two lawyer sages, no doubt, bears on the general question of jurisprudence of property. But both writers have in view, as a matter of fact, the case of acquisition of property by Brahmanas. They are forbidden to accept a return for the gifts they may make (pratigraha). If, by violating this precept, they accept a return, is it a valid property which they can offer to the gods by way of sacrifice? Vijñan holds by the above discussion that they can.

When you once see how the two authors differ on the cardinal question of the origin of proprietary right, you will at once understand the difference in their teachings regarding the question of succession and inheritance. Jimuta being a believer in the ethical origin of proprietary right, naturally holds that a heir takes the property of his ancestor by virtue of spiritual benefit. Further he holds that the property comes to him by a sort of relinquishment by the ancestor, and that it is not a case of acquisition by the heir.

Vijñan, on the contrary, maintaining that the origin of property is popular recognition, naturally holds that relationship by blood or otherwise which influences men, is the basis of inheritance and succession. Accordingly he defines "heritage (*daya*) to be that wealth which becomes the property of another solely by reason of relation to the owner." The

difference in their views also explains why Jimuta makes the text of Manu on the subject the foundation of his principle of inheritance ; because Manu emphasizes the spiritual aspect of the thing. While Vijnan mainly relies on the text of Yajnavalkya, because the latter Rishi prefers the matter of fact aspect of the subject. You should also notice that Vijnaneshwara utilizes the Mimansa Adhikarana as interpreted by Guru Prabhakara who is reputed to be an heterodox propounder of the Mimansa Sutras. While the orthodox interpretation of the Adhikarana as given by Savaraswami and Kumarila Bhatta gives no support to Vijnana's views. For, these commentators explain the Adhikarana as merely showing the difference between Kratu Dharma and Manushya Dharma without any reference to the idea of popular recognition. Be that as it may, I have shown the root of the difference between the two authors, so that you may interpret them satisfactorily.

Jimuta's
spiritual
doctrine is in
accordance
with Manu.

In this connection one thing deserves notice. It has become usual to attribute to Jimutavahana what is called the doctrine of *factum valet* in the sense that he excuses the violation of a Vidhi when the violation has actually taken place. This is clearly doing injustice to him. He preaches nothing of the kind. What Jimuta says is exactly what Vijnan says in connection with the Lipsa Adhikarana. Vijnaneshwara says that a precept, which belongs to the domain of ecclesiastical law, has not in the domain of Vyavahara, the same force as a positive and clear rule of the Vyavahara law itself has. Jimutavahana says the same thing with reference to the texts of Vyasa prohibiting one to alienate one's own

The doc-
trine of *fac-
tum valet*.

share in a joint property or of one's own self-acquired property. He says that this prohibition by Vyasa is a moral precept and cannot weigh against the man's right to exercise such right of alienation which the positive civil law gives him. For, Jimuta takes it as being an admitted axiomatic principle of the Vyavahara law that, a co-sharer can dispose of his share and that one can dispose of his self-acquired property. You see that if this is *factum valet*, then this doctrine is shared by Vijñaneshwara also. Both hold that when what is merely an admonitory precept, has been broken in action, the breach is a mere irregularity which does not vitiate the action. If Jimuta's exposition of Vyasa's texts as above, has been extended to property descended from the grand-father, as to which there is no clear rule of law empowering the father to alienate, he is not responsible for it as I shall show hereafter.

Another instance of divergence of opinion between Vijñaneshwara and Jimutavahana.

Now I proceed to another instance in which Vijñan and Jimuta differ as regards the applicability of certain Mimamsa maxims in interpreting a certain text. The text is to the effect that, a person shall not withhold any common property at the time of partition, and if he do so, it will be a fault. Vijñaneshwara takes this text to be a Pratishedha (an absolute prohibition), and maintains, following the peculiar rules regarding Pratishedha, that even when a co-sharer, who believing that he may use as his own what is common property, withholds it from partition, incurs the penalty of the text. Jimutavahana, on the contrary, holds that in such a case, the man, if he were at all guilty, would not be guilty of embezzlement and theft. In this matter, Vijñan is rather technical; and Jimuta, who would never

shut out the ethics of a question, enters into a discussion of the principles that should govern the case. Vijnan says (in fact what he says is according to Jimutavahana the observation of Bala) that the black kidney bean maxim¹ lays down not only that what is prohibited can not be used as a substitute for another thing; but also that if it be used indistinguishably mixed up with the allowed material, such a mixture even can not be validly used. Therefore he argues that when one withholds common property for his own use he is not exonerated because what he withholds is a mixture of what is his and what is not his.

The black bean maxim is a rider of the Kalanja maxim which amounts to what may be roughly called a prohibition *in rem*. It lays down that green kidney bean being allowed for use in a sacrifice and black kidney bean prohibited, if you make a powder by mixing up the ground particles of the two, that powder can not be validly used.

The question raised above is just the same which arises under our present criminal law *viz.*, whether a co-sharer appropriating joint property is guilty of theft, and it has been held that he is not. Vijnâneswara would hold that he is guilty. Jimutavâhana, on the other hand, maintains that such appropriation is not theft. He puts it thus. First of all, he points out that if anything is meant by the other side it means to hold that a man keeping to himself what belongs to him in common with others is guilty of theft. Then he analyses what the

(1) प्रतिषिद्धद्रव्यस्य प्रतिनिधित्वमात्राधिकरणम् ।

Jaimini VI, iii. Adhi. 6.

offence theft is. He quotes various authorities to show that theft means taking by stealth or openly what a man knows not to be his own but to be the property of another. He makes out that in the case in question this can not be predicated. After giving a mass of arguments on the point, he holds that to apply the black bean maxim to this case, is puerile ; for, the definition of theft, as above explained, is not applicable to the case of embezzlement of common property.

According to Jimutavâhana the matter practically comes to this. Although the Pratishedha principle is of a sweeping character, yet as regards questions of guilt affecting property or the like, the provisions of the law constituting the crime should be strictly construed. I have already explained to you that the Kalanja maxim relates to those general, moral or religious matters called Purusha Dharma, which are more or less of a general character. So one can understand Jimutavâhana's endeavour to take cases of theft and the like out of the purview of that maxim. In fact, Jaimini's Kapijjala (partridge) maxim indicates that where a text involves the infliction of injury on another it should be narrowly construed.

Dvayo
Pranayanti
maxim in
connection
with widow's
right to suc-
ceed to hus-
band's pro-
perty.

Vijnaneswara refers to the Dvayo Pranayanti maxim, in connection with the widow's right to succeed to her husband, who lived separately from his brothers. The difficulty he had to solve arose in this way : Katyayana says, "Heirless property goes to the king deducting however a subsistence for females." But then there are the texts regarding partition : "If he make the allotments equal, his wives must be

rendered partakers 'of like portions.' And again, "Of heirs dividing after the death of the father, let the mother also take the equal share.' Upon this Sreekara argues that, the widow is to get a share where the property is small, but that she should get merely a subsistence allowance when the property is large. Vijnaneswara says that such a conclusion is open to the objection of Vidhibheda (attaching a double sense to the Vidhi), and thus it vitiates the maxim *Dvayo Pranayanti*.

Regarding the *Dvayo Pranayanti* Nyaya which is the 9th Adhikarana, Ch. III. Bk. VII, Sutras 23-25, Jimutavahana fights a pitched battle with Sreekara Misra, in which the Mimamsa maxims are the weapons on both sides. The discussion arises in this way. Here are the Yajnavalkya texts :

"A re-united co-heir of a re-united co-heir, a uterine brother of a uterine brother, shall give up the wealth of the deceased and one born or shall retain it."¹

"One born of a different mother, if re-united, may take the wealth, but one born of a different mother and not re-united; but a uterine brother, even if not re-united, should obtain the wealth, and one born of a different mother, even if re-united, shall not take."²

With regard to the above texts Sreekara holds that the proposition 'a re-united co-heir takes the wealth of a re-united co-heir', and the proposition 'a uterine

1 संवृष्टिनस्तु संवृष्टि सोदरस्य तु संदेः ।

दद्यादपहरेच्छां जातस्य च मृतस्य च ॥ Yajnavalkya s. 138.

2 अन्योदर्थस्तु संवृष्टौ नाप्योदर्थौ धनं हरेत् ।

असंवृष्टापि चादद्यात्संवृष्टौ नान्यमाददात् ॥ Yajnavalkya s. 139.

brother takes the wealth of a uterine brother' do not warrant the conclusion that when there is a united half-brother, and a separated whole brother, both of them inherit together.

The substance of what Sreekara says is this. 'If you want to make the separated uterine brother take together with the united half-brother, you have first to make out that a separated uterine brother has a right of inheritance as an uterine brother. To make out this you must read the text 'a uterine brother takes of the united brother' as an independent proposition without reference to the other text *viz.*, 'a united co-heir takes of the united co-heir.' Again you have to establish that a separated uterine brother takes jointly with a united half-brother. In order to establish this you must read the above mentioned two texts together, the one as being subject to the other. This, he says, is double reading, and as such sins against the *Dvayo Pranayanti* maxim.

Jimutavahana puts, Sreekara's contention very fairly. This statement of Sreekara's contention is found in para. 16, section 5, chapter XI of *Dayaghaga* as translated by Colebrooke. I need not reproduce it here except the following passages.

"Thus to make two *Vidhis* both irrespective of each other and at the same time to make them dependent on each other is not proper, this being the fault of what is called *Vidhi Vaishamya* (inconsistency in a *Vidhi*). Such inconsistency is condemned by *Dvayo Pranayanti Adhikarana*." Jimuta goes on to reproduce Sreekara's views as follows :

"In the next place, he (Sreekara) goes on to show

that, in the instance in question, the case of the existence of a united half-brother and the case of a separated whole-brother cannot be freed from the absurdity of the double application as shown by him at the very outset. And that therefore one must give up the hope of establishing that both of them succeed together. Consequently, according to him, the question becomes whether the one or the other should succeed. And to this question he answers that the whole uterine separated brother should succeed, because the rule regarding the half brother is only a general *prima facie* rule, which is controlled by the special rule regarding the succession of the whole brother¹

Jimutavahana's answer to Sreekara's contention may be shortly put in these words. 'Yes, I read the two texts, once each of them independently and again both of them together. But this is not sinning against the Dvayo Pranayanti maxim.' In other words, this does not constitute a case of inconsistent construction of a Vidhi (Vidhi Vaishamya). Dvayo Pranayanti maxim forbids two readings which are inconsistent or contradictory with each other. It does not forbid once reading two texts independently of each other, and again reading them together, so as to apply them to a

Dvayo pranayanti maxim as explained by Jimutavahana.

1 न चैकस्य सापेक्षं निरपेक्षं विधायकत्वं सूचितं विधिवैषम्यप्रसङ्गात् यथा दर्शितं इयोः प्रथयन्तीत्यधिकरणे तथाचात्र यत्रैव निरपेक्षविधायकत्वं तत्रैव संसृष्टिगन्तु संसृष्टीत्यस्य सोदरस्य तु सोदरइत्यस्य च प्रवृत्तिः स्यात्। तत्रासोदरे संसृष्टिनि सोदरे चासंसृष्टिनि सतुभयोरप्रवृत्तेस्तद्वन्न न कश्चिदपि सृष्टीयादित्यापद्यते तस्मात् संसृष्टिगन्तु संसृष्टीति संसृष्टधने संसृष्टिनः सामान्यतो भागप्राप्तौ तदपवादार्थं सोदरस्य तु सोदर इति वचनं एवञ्च संसृष्टिनीप्यसोदरस्य सोदरे सति न प्राप्तिः किन्नादि विभागसंसृष्टस्य असंसृष्टस्य च सोदरस्यैवेत्यन्तं। तदसङ्गतं नहि इयोः समभवे कैकश्च प्रवृत्तयो युगपदेकैव प्रवृत्तिमात्रेण विधिवैषम्यं।

new case. Jimutavahana argues the matter at great length. I need not reproduce the whole of his arguments. He begins as follows :

“That is not congruent : for it is not true, that there is variableness in a precept, merely because two (rules) which are severally applicable to two (cases) become applicable in a single instance at the same time.”¹

These arguments are contained in paragraphs 17—31 of section 5, chapter XI of Colebrooke’s translation of the Dayabhaga. He begins by giving examples what inconsistency (Vidhi Vaishamya) is, and what it is not. He refers to the Samyoga Prithaka and other such maxims as showing cases of double reading without inconsistency, and he explains the Apachheda and other maxims as cases of true inconsistency of texts. I may profitably quote here Jimutavahana’s explanation of the Apachheda maxim.

“Thus, in respect of the precepts enjoining the votary to bestow his wealth as a gratuity in one instance and no gratuity in the other, which are respectively applicable independently of each other, if either the priest doing the functions of Udgatri or the one performing the office of Pratistotri, singly stumble (in passing from the one apartment to the other, at the celebration of the sacrifice called Jyotishtoma); but, if both these priests stumble at the same time, neither injunction would be applicable ; for that would be a variableness in the precept.”² (Colebrooke).

1 तदसङ्गतं नहि द्वयोः भयवैकल्यः प्रवृत्तभोग्यपदेन प्रवृत्तिमात्रेण विधिवैक्यम् ।

2 केवलोद्गातप्रतिस्तीवपच्छेदेन निःपेक्षप्रवृत्तयोः सर्वसदाविध्यादाविध्या आस्त्योर्युगपदुभयापच्छेदे सति नैकमपि शास्त्रं प्रवर्त्तते विधिवैक्यात् ।

After reciting the above mentioned cases of inconsistent double construction, the author gives a definition of it much in the same terms as those of the Dvayo Pranayanti maxim *viz.*, that to read two texts, once taking the one as the principal and the other as a proviso or exception obviating option, and then again as two separate conflicting texts requiring the use of option, is improper. In this connection Jimutavahana has reviewed the general principles of the law of prohibition and exception. His analysis of these principles is much to the same effect as the analysis given in my sixth lecture.

Jimutavahana also discusses the classification of positive Vidhis in this controversy with Sreekara, and recognizes positive Vidhis either to be Nitya or Naimittwika or Kamya.

The Nitya Vidhis are those which are absolutely binding on all persons, and not dependent on any act or choice; whereas a Kamya Vidhi is that which comes into force only in the event of the man having chosen to do some act voluntarily. The distinction may be illustrated in modern language thus: A man is enjoined not to rob another of his property. This is absolute. But where a man, who has by some contract become the lessee or mortgagee of another person, is placed under certain obligations by virtue of his voluntary agreement, this would correspond to Kamya Vidhi. So, in the Mimansa Sutras, we have Nitya Vidhis in the shape of commands, that every Brahmin should perform such and such sacrifices as a Brahmin. This is Nitya Vidhi. But when certain sacrifices are laid down as fit to be observed by a person who chooses to do so,

Nitya and
Kamya Vi-
dhis.

with the condition that if he commences it and wants to have the benefit of it, he must follow certain rules for the violation of which penalties are provided. This is a case of Kamyā Vidhi. Now Jimutavahana puts it thus to Sreekara :

“ You really treat the second part of Yajnavalkya’s text as a Nitya Vidhi. But if it were so, the whole text providing about optional and voluntary acts, such as separating and non-separating, becomes absolutely useless and irrelevant.” Therefore, he comes to the conclusion that effect should be given to both parts of the text by holding that, where there is an associated half-brother and an un-associated full-brother, they should divide the property equally.

After so much ado in discussing the question of the application of the Dvayo Pranayanti maxim, Jimutavahana, in deciding the question really proceeds upon a point of a grammatical construction of the texts of Yajnavalkya. He settles the whole point by showing that the word ‘alone’ should be understood towards the end of the passage. And Colebrooke has accordingly inserted this word.

The bearing of the Dvayo Pranayanti maxim on the general arrangement of the Mimamsa system is this: The axiom of a word once uttered not to be taken in two senses, prevents the misapplication of the Linga principle. The Dvayo Pranayanti maxim prevents the misapplication of the Vakya principle by preventing such reading of two clauses with each other as leads to inconsistency. There is also a rule to prevent the misapplication of the Prakarana principle. This rule is known as the rule disallowing Atiprasanga, Atiprasanga

meaning the far-fetched inclusion of one idea into another. Jimutavahana, as I said has, by his nice dissertations, emphasised the Dvayo Pranayanti maxim.

You will naturally wish to know how such a maxim as this is applicable to our present law. For instance, is it applicable to anything contained in the Dayabhaga? I shall explain to you how in interpreting the Daya-bhaga of Jimutavahana the Judges under the present regime have flagrantly violated the Dvayo Pranayanti maxim, so earnestly expounded by himself.

With regard to all property whatever, whether self-acquired or ancestral, Jimutavahana maintains that the sons have no right to compel the father to make a partition so long as he lives ; but that to make a partition or not depends upon his choice. But Jimuta imposes this limit to the father's choice as regards the ancestral property, that he can not choose to make a partition of it till the mother is past child bearing. Further, as regards the mode of making the partition, Jimutavahana lays down that in the case of self-acquired property, he can make any sort of division according to his will, but that in the case of ancestral property, he can only retain a share to himself double of that of a son, and is bound to make the shares of the sons either equal, or giving to the eldest and the middle the excess prescribed by Manu. Thus the law he lays down is, first, that the father of a family has absolute proprietary right to his self-acquired property ; secondly, that his proprietary right to ancestral property is so limited as to entitle him to only double share at the time of partition, and to leave him no right to make any arbitrary distribution among his sons. In short,

Jimutavahana's view as to father's power over ancestral and self-acquired property.

while his right to his self-acquired property is absolute, his right to the ancestral property is restricted. His self-acquired property he can wholly dispose of, but of the ancestral property he can only sell a part for the maintenance of the family.

*Factum
valet* doc-
trine.

This being his conclusion regarding the two classes of property respectively, he lays down a proposition (miscalled the *factum valet* doctrine), that in the case of a co-parcener in an undivided property or in the case of a father *qua* his self-acquired property, the directions against alienation are merely moral precepts, and that alienations actually made in disregard of them are valid. The two texts of Vyasa with reference to which he lays down the above proposition or doctrine of *factum valet* concerns respectively the case of a co-parcener's interest and the case of self-acquired property.

Its misin-
terpretation
by English
Judges.

Now the question is, can you read this *factum valet* proposition as bearing on a father's self-acquired property as well as the ancestral property without violating the Dvayo Pranayanti maxim? If you take the father to be a co-parcener of the ancestral property to the extent of a double share, then the *factum valet* doctrine may be applied to alienations made by the father of his share only. But how can this doctrine be applied once to only what is one's own exclusive property and again to what is not his exclusive property? This would clearly be a case of Vidhi Vaishamya as explained by Jimutavahana. So the Pandits who advised the English Judges to apply the doctrine to both cases, inconsistent with each other,

must be held as guilty of Vidhi-vaishamya or of violating the Dvayo Pranayanti maxim.

In fact, Jimutavahana repeatedly explains that a father is prohibited from selling or otherwise disposing of ancestral property, because the sons have a legal right of maintenance to it by the express text of Manu. And that also is stated to be the reason why a father can not partition the ancestral property before the mother is past child bearing. Thus so long as the ancestral property is not partitioned, it is held by the father subject to the legal charge of maintenance in favour of the sons. *This charge Jimutavahana never whittles away as a matter of moral precept, as he does whittle away the precepts, regarding maintenance out of the self-acquired property of the father or out of the property of co-parceners.

These texts which he takes as moral precepts, and the breach of which he takes as cured by the *factum valet* principle are as follows : "Though immoveables or bipeds have been acquired by a man himself, a gift or sale of them (should not be made) by him, unless convening all the sons".

"A single parcener may not, without consent of the rest, make a sale or gift of the whole estate, nor of what is common to the family."¹

"Separated kinsmen, as those who are unseparated, are equal in respect of immovables ; for one has not power over the whole, to give, mortgage, or sell it."²

1 स्थावरस्य समस्तस्य गोवसाधारणस्य च ।

नैकः कुर्यात् कृत्यं दानं परस्परमतं विना ॥ Vyāsa.

2 विभक्ता अविभक्ता वा सपिण्डाः स्थावरे समाः ।

एकोह्यगोशः सर्वत्र दानधननविक्रये ॥ Vyāsa.

The reason of applying the *factum valet* principles to these texts is obvious. They must be mere moral precepts, as being inconsistent with the following text declaring individual right of property :

“When there are many persons sprung from one man, who have duties apart, and transactions apart, and are separate in business and character, if they be not accordant in affairs, should they give or sell their own shares, they do all that as they please, for they are masters of their own wealth.”¹

But how can this doctrine be applied to the following texts of Yajnavalkya and Manu which are not inconsistent with any other positive rules and which Jimutavahana throughout treats as binding. These texts are :—

“The father is master of the gems, pearls and corals and of all [other movable property] : but neither the father, nor the grandfather, is so of the whole immovable estate.”² [Yajnavalkya.]

“The support of persons who should be maintained is the approved means of attaining heaven. But hell is the man’s portion if they suffer. Therefore (let a master of a family) carefully maintain them.” [Manu.]

In the case of the father’s disposing power over ancestral immoveable property, he admits that the res-

- 1 यदीश्वजाता वङ्गवः पृथक्पत्न्याः पृथक्क्रियाः ।
पृथक्कर्मणोपेता न चेत् कार्येषु सम्मताः ॥
स्वभागान् यदि वदुस्तं विक्रीषीयुरपि वा ।
कुर्य्यथैष्टं तत्सर्वमौशासो स्वधनस्य वै ॥ Nārada, 13. 42-43.
- 2 मन्त्रित्वाप्रवासानां सर्वस्यैव पिता प्रभुः ।
स्यावरस्य तु सर्वस्य न पितान् पितामहः ॥ Yājñavalkya.

triction imposed by the texts of Yajnavalkya and Manu on that power is legal to the extent of the charge which the sons have over it for maintenance. But in the case of co-parceners, or of a father regarding self-acquired property, the restrictions imposed by the texts of Vyasa and others on the power of disposal have not according to him the force of the law but are mere moral precepts, a hundred of which could not vitiate a transfer really made. This distinction between the two cases is observed by him throughout. According to him, the ownership of the father in the ancestral property is subject to the right of maintenance of the sons, in consequence of which he cannot partition it before the mother is past child-bearing ; and the further consequence of which is that, when he partitions it he is bound to share it in certain fixed proportions with his sons. The ownership of the father, however, in property acquired by him, is wholly free from these restrictions. The sons have no right of maintenance out of it, and the father can partition it in any way he likes. Therefore, it is manifest that the law laid down by Jimutavahana as regards the father's ownership in ancestral property is quite distinct from that regarding the father's self-acquired property, and that the one cannot be confounded with the other, the one being subject to a legal charge and the other not. Yet such a confusion of one for the other has been made by the Pundits, who advised the Supreme Court Judges to the effect that a father under the Bengal school has the same power of disposal over ancestral property as over his self-acquired property.

Nature of father's ownership over ancestral and self-acquired property.

The above view of Jimutavahana's texts would not

Misinterpretation of *Factum valet* doctrine violates the Linga, Vakya and Prakarana principles.

have been possible if the rules of Mimansa interpretation had been in the mind of those concerned in it. The construction of the so-called *factum valet* text to the effect that Jimutavahana makes no distinction between ancestral and self-acquired property violates, in fact, all the general principles laid down by Jaimini, viz., the principle of Linga, the principle of Vakya and that of Prakarana. Thus to hold that a Hindu of the Bengal school can dispose of his ancestral property by will or otherwise as absolutely as he can his self-acquired property is not warranted by Jimutavahana's texts. According to these texts, as regards ancestral property, the sons have a charge for maintenance on the ancestral property, and the measure of the extent of the charge is what the sons are entitled to get on a partition of such property. Surely, a father is not competent to dispose of by will more than what he would be entitled to get in the event of a partition of it made by him. In other words, if he has one son, he can dispose by will two thirds share of it ; if he has two sons, then a moiety ; if three sons two fifths. No doubt he could sell away the whole of it for the requirements of the family. But in making a gratuitous disposition he can not give away more than he was entitled to get by partition. Anyhow his testamentary disposition must be subject to the charge of maintenance of the sons.

In fact, the old Hindus as a rule cherish the belief that the ancestral property cannot be given away by will without providing for the maintenance of sons. Prasanna Kumar Tagore in his well-known will, which was eventually the subject of construction by their Lordships of the Privy Council, took care to recite at

the outset that he had made provisions for the maintenance of his son.

You must, however, bear in mind that my object in discussing the subject is simply to show how the Mimamsa rules of interpretation are applicable and could be usefully applied to the construction of the writings of the Digest writers, who have codified the Smritis and who are to be looked upon as our last lawgivers. The law as it has been settled by the constituted courts of the present regime must prevail, notwithstanding what might be said against the soundness of the settlement made by those courts. There can be no doubt that, it is too late now to talk of the father having the right to dispose of by will only of a certain share of the ancestral property. But perhaps the question whether the father's devise of such property is not subject to the charge of maintenance of sons if there be any, has not been completely concluded by decisions, as this question does not appear to have been pressed in most of the cases on the subject.

I would give you another instance of what appears to be an unjustifiable construction of the law laid down by Jimutavahana, and this is an instance connected with the same question of the power of disposal of immovable property. The law of wills under the Bengal school is engrafted on the law of gifts. In the language of the Mimamsakas the law of gifts has been made applicable to that of wills by way of Atidesha. Now you have seen that in applying the principle of Atidesha, one is bound to see that an old rule be not made applicable wholesale to a new case if parts of the former do not fit in with the latter. The Mimamsakas

The law of
wills and that
of gifts.

lay down that such parts should be regarded as *Badha*. In short, the *Mimansakas* hold that in applying our old rule to a new case what was a general rule may be subjected to exceptions.

As regards the subject in question, *Jimutavahana* lays down the general principle as to gifts in the following terms.

"The donee's right to the thing arises from the act of the giver; namely, from his relinquishment in favour of the donee who is a sentient person."¹

Gift to a
non-existent
being is in-
valid is too
general.

Their Lordships of the Privy Council relying on this text hold that, under the Bengal school a testator cannot make a valid bequest in favour of a person who is not in existence at the time of his death. There can be no question to this proposition as a general rule. But it would appear that according to Hindu Law and *Jimutavahana's* own text, this general proposition should be subject to an important exception in favour of testamentary settlements in favour of lineal descendants up to the great-grandson though not in existence. For it is an accepted principle of the Hindu Law that, a man should not only provide for the maintenance of the existing members of his family, but also of those who are yet to be born. The text of *Vyasa* on the subject runs thus:

"Though immovables or bipeds have been acquired by a man himself, a gift or sale of them should not be made without convening all the sons. They, who are born, and they who are yet un-begotten, and they who

I दाने हि चेतनोद्देशनिश्चितत्वाभावे दातव्यापारात् सम्प्रदानस्य शब्दे
स्मात्तिल'। Dayabhaga, Ch. I. para. 21.

are still in the womb, require the means of support, no gift or sale should therefore be made."¹

This text is not only quoted in the Mitakshara but it is also partially quoted by Jimutavahana, and that too in connection with the widely knowing saying that, a fact cannot be altered by a hundred texts. True, Jimutavahana treats the text of Vyasa as a moral precept. But if it be the duty of a man to provide for the support of those members who are born and those who are yet un-begotten, it is impossible to say that it is illegal to provide by will for grandson, great-grandson and the like, who may not be in existence at the time of the testator's death. Jimutavahana himself admits that one who violates the precept incurs a sin. Besides, he emphasises the duty of maintaining the family by quoting the authority of Manu in the following passage :

"For, the maintenance of the family is an indispensable obligation, as Manu positively declares. 'The support of persons who should be maintained is the approved means of attaining heaven. But hell is the man's portion if they suffer. Therefore (let a master of a family) carefully maintain them.'"²

- 1 स्थावरं द्विपदश्चैव यद्यपि सयमर्जितं ।
असंख्यं सुतान् सन्तान् न दानं न च विक्रयः ॥
ये जाता येष्यजाताश्च ये च गर्भे व्यवस्थिताः ।
इति च तेऽभिकाङ्क्षन्ति न दानं न च विक्रयः ॥ Vyasa.
- 2 कुटुम्बस्यावश्यं भरणायैवात् यथा मनुः ।
भरणं पीथ्यवर्गस्य प्रशस्तं स्वर्गसाधनं ।
नरकं पीकने चास्य तस्याद्यजेन तंभरेत् ॥ Manu.

It may be said that if the duty of maintaining members of the family not yet born be asserted, there should be some limits to it. Such limits, however, are clearly indicated by the text of Manu so often quoted by Jimutavahana :

“To three must libations of water be made. To three must libations of food be offered.”

In fact, up to the great-grandson there is a continuity of the same person according to the Hindu ideas. This being so, it would appear that in applying the principle of the law of gift which requires that the donee should be a sentient person, in the case of a will, an exception should have been made as regards devises in favour of descendants up to the great-grand son. Such an exception is called for in accordance with the well-known principle of Mimansa enunciated as the Badha principle.

It is unfortunate that this view of the law was not placed before their Lordships of the Privy Council in *Tagore v. Tagore*. The only exception to the rule against perpetuity which has been admitted in that case is in regard to religious and charitable trusts. The above considerations, however, tend to show that a trust in favour of descendants down to the third degree would be equally valid under the Hindu Law. If this had been recognised, it would have been an exceedingly welcome thing to the Hindus of Bengal, who are pressing for legislation to secure this object in the shape of a law for settlement.

Vijnaneshwara's work has no less suffered at the hands of English judges in the way of wrong interpretation than Jimutavahana's work. The basical principle of

his work restricting the disposing power of the father in respect to ancestral property has been virtually done away with, and that by violating the Dvayo Pranayanti maxim which he, in common with Jimutavahana, revered. By the two clauses translated by Colebrooke in paras. 28 and 29, section i. chapter I., Vijnaneshwara limits the power of the father to a right to alienate properties, either in case of minority of his children or for family necessity or for pious duty. This is very short of the large power which has now been adjudged to him *viz.*, to alienate for any cause provided it is not for immoral purposes. This large power is given by relying on the clauses 50 and 51 of Yajnavalkya regarding the duty of sons to pay their father's debts. But these clauses relate to the payment of debts of a father who is really or practically dead. These clauses have nothing to do with debts contracted by a father while he is living. To read these debt clauses, once as only relating to the liability of heirs and again as affecting the liability of co-parceners is, simply a violation of the Dvayo Pranayanti maxim as explained by Vijnaneshwara.

LECTURE IX.

In this lecture I shall in the first place deal with the application of Mimânsâ principles by writers other than the founders of the two codes—Dayabhâga and Mitâksharâ ; and in the second place, with presumptions of the Smriti Law available for interpretation.

Section I. Application of Mimansa principles by writers other than the founders of the two codes.

Jimutavahana and Vijnaneswara's works have been referred to, chiefly as regards the difference of their views worked out by Mimansa principles, on the question of succession and inheritance. I shall now explain to you how two other leading authors differ relying on the Mimansa rules in enunciating the principles of the law of adoption *viz.*, Nilkantha and Nanda Pandit. The latter has written a special treatise on adoption *viz.*, the Dattaka Mimansa ; and his views have been with some variations followed by another writer, the author of the Dattaka Chandrika. The work of Nilkantha is a general digest of the Mitakshara school of law, as it obtains in the Bombay Presidency. But though Nilkantha's work, called the Vyavahara Mayukha, is a general digest, his views on the question of adoption proceed upon lines different from those of the Dattaka Mimansa and the Dattaka Chandrika. So a comparison between Nilkantha

Law of adoption as interpreted by Nilkantha and Nanda-pandit.

and Nanda Pandit's views on the question of adoption is appropriate. Both of them support their views by the Mimansa principles of interpretation. Hence their discussions on the particular subject of adoption illustrate and explain those principles.

Nilkantha is an illustrious lawyer, the worthy son of a worthy father. His authority is great. His Vyâvahâra Mayukha is to the Bombay school what Jimutavâhana's Dâyaabhâga is to the Bengal school. His scholarship in the Mimânsâ Shâstra is as great as that of his venerable father, Sankara Bhatta, who is the author of a well-known Mimânsâ treatise known by the unpretentious name of Mimânsâ-bâla-prakâsh. In one of the verses appended by Nilkantha to each of the twelve Mayukhas (sections) of his work occur the following :

"That king gave a command to Nilkantha, the gem of the assemblage of learned men, the ornament of the residents of the Deccan, who was firmly grounded in Smritis, and who had no equal [in the Purva Mimansa] of Jaimini. [Nilkantha] courteously bowing to that command read and examined all the works, and is now laying before the world this Bhagavad-bhaskara."¹

Nilkantha is a lawyer of liberal mind. His views never betray a spirit of exclusiveness. On the question of adoption on many important points he does not share in the exclusive spirit with which Nanda Pandit,

१ आक्रमस्तेन राज्ञा विदुषकुलमणिर्दासिनात्यावहंसो भट्टः श्रीनीलकण्ठः अतिष्ठ
दृढमतिर्जैमिनीशद्वितीयः । आक्रामादाय मूर्ध्ना सविनयममुना तस्य सर्वाङ्गि-
बन्धान् दृष्ट्वा सम्यगे विधाय अगतिं भगवद्भास्करसन्त्यतेऽयम् ॥

Mandalik's Introduction lxxviii (11).

the author of the Dattaka Mimansa, interprets the texts on the subject. For instance, as you will presently see, Nilkantha differs from Nanda Pandit and others on the question whether a sister's son and the like are not eligible for adoption. He and his father, Sankara Bhatta are, as a general rule, in favour of a liberal construction regarding the rights of Sudras and females. The Sudras are declared to be subject to the three debts equally with the three twice-born castes. This is a lift given to the Sudras not allowed by many writers.

As regards women, a comparison of Nilkantha's views with those of Nanda Pandit on the competency or otherwise of the widow to adopt shows the liberal tendency of the former. According to Nanda Pandit, a widow cannot adopt even with the assent of her kinsmen. But Nilkantha has no hesitation in allowing it. The Privy Council no doubt have, in one important question *viz.*, the question of the eligibility of the son of the sister and the like, given effect to the views of Nanda Pandit. But they have done so on the ground that those views have been acted on for a long time. However, considering the importance of Nilkantha's views on the subject I shall discuss them in brief.

Before, however, taking up the subject of Nilkantha's application of Jaimini's maxims to the subject of adoption, I shall acquaint you with his treatment of a very remarkable Mimansa maxim regarding another important subject *viz.*, the subject how far a sovereign has a proprietary right to the soil included in his dominion.

This maxim is called the Sarva Dakshina maxim.

Nilkantha
on Sarvadak-
shina
maxim.

It has been briefly explained before. Nilkantha says the following with regard to it :

"In conquest also, where there is ownership of the conquered in houses, lands, money, or the like, therein only arises the ownership even of the conqueror ; but where the conquered has a right to taking taxes [only], the conqueror has even the same, and no ownership. Therefore it is stated in the sixth book of the Purva Mimansa, "The whole earth cannot be given away by the king of the world ; neither the [whole] Mandala [dependency] by the ruler of that dependency." The ownership in each village, field, and the like of the whole earth or the dependency belongs solely to the respective *Bhaumikas* or landlords. The ruler has only to take the taxes. Hence in what is now technically called a gift of land &c., a gift of the soil is not accomplished, but only a grant of due allowance [is provided]. But in purchases made from the *Bhaumikas*, or owners of the soil, even ownership in houses and soil accrues. Therefore [to the giver of such land] there is also the fruit of the gift of the soil."¹

On the subject of adoption Nilkantha refers to the following maxims among others.

The three maxims invoked by Nilkantha to explain the subject of adoption.

1. The Nishada Sthapati maxim.
2. The Maitra Varuna maxim.
3. The Three Debts maxim.

The last having been referred to by Nilkantha's father in the first instance and then quoted by him. The first maxim which shows that a Nishada can be a

¹ Mandalik's edition, pp. 34-35.

Sthapati—a sacerdotal functionary—is referred to by Nilkantha in the following passage :

“Thus the right of a Sudra to adopt, being established like the established right of the carpenter—Nishada, (to perform a sacrifice), the assertion in the Shuddhi Viveka that a Sudra is not entitled to make the acceptance of a son, which has to be accomplished through Vedic Mantras (sacred texts), and by a *Homa* (sacrifice to the fire) is also refuted.”¹

The texts under consideration in the Maitra-Varuna Maxim are as follows :

“He hands over the staff to the Maitra-Varuna priest.”

“He initiates by means of the staff.”

The question here is whether the two sentences together mean that the initiation must take place by a staff which has been handed over by the priest, or that the meaning is, that a staff must be handed over to the priest in order that he may effect the initiation by it. In other words, which of the two sentences is imperative and which a mere recital. Jaimini after discussing the question, comes to the conclusion that the latter construction is the proper construction, and that the handing over the staff is the main object of the text. In short, the Adhikarana means that the words ‘hands over the staff’ is not merely the recital of an act done but constitutes an injunction by itself.

Nilkantha uses this Maxim in construing the text of Saunaka.

Nilkantha refers to

¹ Mandalik's edition, pp. 55-56.

Maitra-
Varuna
Maxim in
construing
the text of
Saunaka.

“The daughter's and the sister's sons are indeed adopted as sons by Sudras.”¹

Nilkantha takes the above text as divisible into two parts :

The daughter's and sister's sons are adopted.

They are adopted indeed by the Sudras.

Having this in view he applies the Maitra-Varuna Maxim to the case, and holds, that the first sentence indicates what should be done, and the latter sentence is a subsidiary recital. Just as in the case of the Maitra-Varuna Maxim, the handing over the staff is an act enjoined, and the initiation is recited as only as what follows.

The text of
Saunaka is
not limited
to Sudras.

Thus according to him the text does not intend that the adoption of a daughter's and sister's son is limited to the Sudras. For if you take it to be limited to the Sudras then you, in effect apply the rule of Parisankhya, which means that what is expressly mentioned excludes what is not mentioned. But this rule is not legitimate according to the Mimansakas.

Nilkantha's father, Sankara Bhatta in his works on Dharmadvaitanirnaya has a detailed discussion on the construction of the said text ; and to the same effect Nilkantha refers to his venerable father's disquisitions, which will be found as translated by Mr. V. N. Mandalik.²

I shall refer to Sankara Bhatta's disquisitions on this point only so far as he dwells on the great maxim of the Three Debts.

1 दौहित्री भगिनेयश्च वृद्धैश्च क्लृप्तं सुतः । Saunaka.

2 Mandalik's edition, pp. 54-55 notes.

Sankara Bhatta's application of the maxim of the Three Debts.

Sankara-bhatta's dealing with three-debts maxims.

"[If it be asked] how the Sudra is of future use, the answer is :—In the Vedic text 'There is no [translation] to the higher world [after death] in the case of a sonless man ; [for] by his birth a Brahmana becomes a debtor in three [ways, viz.], to the gods in sacrifices, to the manes in issue, [and] to the Rishis in learning' ; the term Brāhmana is used as illustrative [of all the classes], as has been stated in the Adhikarna (aphorism)—*Brāhmanasya Somavidyā prajāṃ rinavākhyena samyogāt*,¹ which means 'To the Brahmana Soma (or sacrifice), Vidyā (knowledge of the Vedas) and Praja issue [in the shape of sons] are [necessary], because of the applicability to him of the text of [the three debts]. Thus a Sudra [too] has to discharge his debt to the manes'.²

Now we have seen how Nilkantha takes as his guide the principles of Mimāṃsā interpretation in dealing with the subject of adoption.

The authors of the Dattaka Mimamsa and of the Dattaka Chandrika similarly rely on Mimamsa principles in dealing with that same subject. "For instance, among others the Dattaka Mimamsa refers to (1) Prānbhrit Maxim³, (2) Vaiswadeva Maxim⁴, (3) Jateshti Maxim⁵

Four maxims referred to in Dattakamimamsa in connection with adoption.

1 ब्राह्मणस्तु सोमविद्या प्रजापत्यवाक्येन संयोज्यात् ।

Jaimini VI. ii. 31.

2 Mandalik's edition pp. 54-55 notes.

3 प्राब्रुधदादिशब्दानां सुवर्ण्यताधिकरणम् । Jaimini I. iv. Adhi. 17

4 वैश्वदेवादिशब्दानां नामधेयताधिकरणम् । Jaimini I. iv. Adhi. 10

5 जातेष्टि न्यायः । Jaimini IV. iii. Adhi. 18.

and (4) The Ishti Somaya¹ and some other Maxims regarding the order in which acts should be performed.

The Dattaka Chandrika refers to the Amiksha Maxim (which is referred to by Nanda Pandita as well) and the Kapijjala Maxim among others.

Pranbhrit
maxim.

(1) The first of these Maxims *viz.*, the Pranbhrit Maxim, you know. It means that what originally had a limited signification, may have acquired an extended signification.

Relying on this, Nanda Pandit argues that the word substitute, though it was first applied in express terms only to five descriptions of sons, is by general use applicable to all the twelve descriptions.²

Vaiswadeva
maxim.

(2) You have also seen that the Vaiswadeva Maxim lays down the principle that in the case of a compound word like Vaiswadeva the meaning of the component parts being ignored, the conventional sense of the whole is to be adopted. Vaiswadeva does not mean god of the universe, but it is the proper name of a particular Yajna. Nanda Pandit uses this principle to show that although the word Sapinda has an etymological sense consisting of the meaning of Sa and Pinda that should be ignored, and the conventional

1 इष्टिसोमयोः पूर्वोपय्यानियमाधिकरणम् । Jaimini V. iv. Adhi. 3

2 यथा चेतजपौविक्रिय पत्रिकाकानीनपौनर्भव सङ्गोदगुदजानां कश्चित् साह-
मात्र सम्बन्धात् कश्चिदाविकल्पोभय सम्बन्धादविकल्पावयवत्वेन मुख्य प्रतिनिधित्वं
दत्तकक्रीतकृतिमदत्तात्मापरिहानां वाचनिकं प्रतिनिधित्वमिति प्रतिनिधिशब्दयोभय-
वापि भूत्वा सङ्गोदपदधातीतिवत् । Dattaka Mimāṃsā Sec. I para. 35.

meaning of the compound word, as indicated by a certain text of Manu, should be accepted.¹

(3) The Jatesti maxim or the maxim for the substitution of the Putikâ plant for the Soma plant.² Jatesti maxim.

This maxim lays down that where a thing is enjoined for a certain purpose, in its absence another thing may be substituted which serves that purpose. In the case of the adopted son Medhatithi raises the question that an adopted son cannot be the substitute of a begotten son, because the paternal debt is satisfied by *begetting* a son, and begetting is wanting in the case of the adoption. Nanda Pandit refutes this objection by appealing to the maxim in question, according to which the question, how the thing for which a substitute is to be made originates, is not to be looked to, in determining the fitness of the substitution, but the purpose which the thing would have served is to be looked to. He argues that a son secures salvation by offering Pindas, and an adopted son would serve the same purpose, that the act of begetting is incidental in the way of securing the instrument for the purpose of salvation.³

(4) Nanda Pandit appeals to the Ishti Somaya maxim to clear away the difficulties arising from texts laying down the necessity of performing, on the part of an adoptive father, the Jateshti ceremony (the sacrifice Ishti Somaya maxim.

1 Dattaka Mimansa Sec. VI. para. 27.

2 पूतिकस्य सोमप्रतिनिधित्वाधिकरणम् । Jaimini VI. iii. Adhi. 13.

3 तस्मादावृत्त्यभाषिकायां भावनायां पुत्रस्य करणतया तदपचरि दत्तकादीनां प्रतिनिधित्वमविद्वद् सोमापचरं पूतिकाचामामि ।

Dattaka Mimansa Sec. I, para. 41.

for the well-being of the born), the sacrifice for the male issue and the burnt sacrifice in case of the adoption of a previously betrothed woman. The difficulty arises from the author's conclusion that an adoption up to the fifth year is valid, and it is also valid if the adoption takes place before the tonsure ceremony. The ceremonies mentioned are directed to be performed ordinarily by the natural father at or shortly after birth. But how can this be in the case of an adoptive father who is also required to perform them. Hence the difficulties. Nanda Pandit gets over them by appealing to the *Ishtisomaya* maxim which in effect lays down that when a difficulty arises with reference to the order in which an action is to be performed, reason and necessity should be consulted. He also appeals to *Adhikaranas* 17th and 18th for the same purpose ; these *Adhikaranas* authorizing the shifting of time in emphatic terms by pointing out that because the birth ceremony is to be performed, just on birth, it cannot be carried out literally, for the child must have time to breathe and suck the mother's breast, before any ceremony is to be performed, otherwise the result may be fatal.

Allusion is also made by Nanda Pandit to the 2nd *Adhikarana* of the 8th Chapter, Bk. X, which lays down that in the *Pashu Yāga* the prohibition of the two offerings of Ghee called *Ajyabhaga* is merely an *Arthavada* and not a real prohibition.

Nanda Pandit alludes to this maxim in discussing the proposition that the rule prohibiting the marriage of a person with a *Sapinda* girl, has no application to the case of the marriage of the adopted son with a

girl, who is a Sapinda of his adoptive father, because he says that the prohibitory rule is merely a recital of the prohibition of conjugal connection between persons related both by birth as well as offering of oblations. It can not extend to the case of the adopted son.¹

Next I shall give you the two cases of the application of Mimāṃsa by the author of the Dattaka Chandrika.

(1) The author of the Dattaka Chandrika puts to himself the question whether in the case of two co-widows, if one of them adopt, whether the adopted child becomes the son of the other as well. To those who deny this, the author answers by appealing to the Amiksha maxim of the Mimāṃsa, which has been amply explained before. The object of it is to separate the principal effect from the incidental. The author's argument seems to be this, that the adoption is really to the husband, and, that the relationship of the son with the wife of the adopted is merely incidental. Therefore, in the case of two widows, it is immaterial which of them adopts, the adopted son bears the same relation to both the widows

Amiksha
maxim.

(2) The author of the Dattaka Chandrika refers to the Kapijjala Nyāya (partridge maxim) in connection with the word Brahmanas in the plural number, which occurs in a portion of Saunaka's often quoted passage.

Kapijjala
Nyaya.

You will observe that the application of Mimāṃsa

¹ Dattaka Mimāṃsa Sect. VI. para. 31.

Saunaka and
Sakala's
texts as
regards the
adoptibility
of certain
sons.

principles in the Dattaka Mimansa and Dattaka Chandrika is with reference to unimportant incidental matters. The reason of this is that as regards most of the important questions the authors of these works take the texts to be clear and unambiguous. For instance, as regards the question of the adoptibility of daughter's or sister's or maternal aunt's son, they take the text of Sakala to be clear and conclusive. But you have seen how Nilkantha's disquisition on the text of Saunaka touching the point shows the doubtful meaning of that text ; and you will see that the conclusive character of Sakala's words is extremely doubtful, seeing that it is not quite in accordance with the teachings of venerable Manu, whereby the daughter's son may be accepted in some cases as a son. With reference to the adoptibility of a boy who is the only son of his parents, both the Mimansa and Chandrika entertain no doubt as to the binding character of the texts of Saunaka and Vashistha on the subject. Although their Lordships of the Privy Council have held the texts to be merely monetary.

Necessity of
Mimansa
rules in inter-
preting
Smritis.

Now I would refer to the two great commentators of Manu. Kulluka observes at the outset of his commentary that the proper way of expounding Manu's Smriti and the rest is by applying the Mimansa rules in interpreting them, and not the iconoclastic rules of the free-thinkers.¹

१ विरोधिबीहादितर्कं न हनव्यानि, अनुकूलम् नीमांसादि तर्कः प्रवर्तनीय
एव । :

Kulluka's commentary on Manu, Sloka 1, Ch. I.

With regard to Jaimini's definition of Dharma or Vidhi, both Kulluka and Medhatithi say in effect that anything expressed in the imperative mood in the sacred books is not Dharma or Vidhi by Jaimini's definition, but that it must be a matter which is commanded and which at the same time is productive of spiritual bliss. Therefore the text *Shyenuena abhicharan yajeta* is not a Vidhi or Dharma text but is merely an Arthavada.¹

All imperative texts are not Dharma or Vidhi.

As regards Arthavada, both Kulluka and Medhatithi emphasise the utility of the classification of texts into Vidhi texts and Arthavada texts. They explain Arthavada as being the statement of what is already established and thus show that it does not impose any duty by itself.² According to Medhatithi, an Arthavada which is not connected with a Vidhi text but gets its support from some other department of knowledge may be regarded as a Gunavada (general clause).³

Utility of classification of texts into Vidhi and Arthavada.

As regards the application of the principle of Anuvada to a certain text of Manu, Kulluka and Medhatithi differ. Thus discussion on this point is of some importance.⁴

1 Kulluka's commentary on Sloka I, Ch. II. and also Medhatithi's commentary on Sloka I, Ch. II.

2 Medhatithi's commentary on Sloka 3, Ch. I. and Kulluka's commentary on Sloka 6, Ch. II.

3 अर्थवादि तु प्रमाणात्तरानुसारेण गुणवादी न दोषाय इति ।
Medhatithi's commentary on Sloka 103, Ch. I.

4 अनुवादमात्रमेतदिति मेधातिथिमतं इत्यादि ।
Kulluka's commentary on Sloka 103, Ch. I.

Principle of
Linga how
applied.

Kamya and
Nitya Vidhi.

Medhatithi explains the principle of Linga, and points out that in the passage *Varhi Deva-sadanam dami*—an affirmative sentence is read as a mandatory one by the principle of Linga (the suggestive power of words).¹ He also emphasises the principle that where a clause clearly shows an express command, the principle of Linga is not to be resorted to.² He refers to Viswajit Nyaya saying that where acts are prescribed of which no beneficial result is stated, the acquisition of heavenly bliss is to be presumed as the intended result by the principle of *Viswajit Nyaya*.³ Medhatithi explains that where the attainment of a benefit is the object of a prescribed act, if a man does not perform the act, he loses the benefit, as in the case of a Kamya Vidhi. But where a Vidhi is absolute (Nitya) there is no question of benefit or otherwise ; and if a man fails to fulfil such a Vidhi, he incurs the spiritual evil consequences of disobeying it, and it is to prevent such evil consequences that he is to do the act. Thus Medhatithi gives a clear explanation of the Apurva Sanction.⁴

Medhatithi discusses the question whether the passage 'Brahmana should not drink spirituous liquor'

1 वहि देवमदनं दामौतिलिङ्गादनेन वहि सुनातीतिमुतेरनुमानम् ।

Medhatithi's commentary on Sloka 3, Ch. I.

2 विध्यर्थता चावगम्यमाना लिङ्गादीनां त्यक्ता स्यात् ॥

Medhatithi's commentary on Sloka 3, Ch. I.

3 सीर्ष्यादिषु इत्यादि ।

Medhatithi's commentary on Sloka 2, Ch. II.

4 सीर्ष्यं चरुं निर्व्येपत् ब्रह्मवर्षं सकामो इत्यादि ।

Medhatithi's commentary on Sloka 7, Ch. I.

should be understood as being limited to the masculine gender and to the singular number, according to the literal construction of the passage ; or it should be applicable to all Brahamans and to all Brahman ladies also. By applying the Grahakattwa maxim to this case, Medhatithi holds that the passage ' Brahmana should not drink spirituous liquor ' should be construed so as to include the whole class of Brahmanas, male and female. Medhatithi, in this connection, enters into a discussion why passages like ' sacrifice animal in a Yaga ' should not be construed in the above way to justify the sacrifice of many animals but should be construed literally to indicate the sacrifice of a single animal. This discussion ' belongs to another maxim. ' Medhatithi's book abounds with other instances.

Application
of Grahak-
attwa
maxim to a
certain
passage.

Raghunandana shows that by applying the Vakya principle, the following text of Manu should not be taken as a Prakarana of the Darsa Purnamasi yaga in connection with which it occurs, but as a general Vidhi "one who assaults a Brahman must perform the Krichhra penance."² This text read with what follows makes it a general proposition and not limited to the cases of one who is engaged in performing the Darsa Purnamasi yaga. With reference to the same passage the further question raised is, whether when a man assaults five Brahmanas he is to perform the Krichhra penance five times. Raghunandana shows that performing a penance once only is sufficient by

Raghunan-
dana apply-
ing Vakya
Principle in
construing
a passage
of Manu.

1 Medhatithi's commentary on sloka 90, Ch. V.

2 अथगृह्यचरितं कच्छमतिकच्छं निपातये ।

Jaimini's principle of Tantrata. With regard to the same passage there is this further question. In the text so far as it is a Vidhi, there is no mention of any punishment to avert which the penance is to be performed. Raghunandana points out that punishment is mentioned in the next sentence which is an Arthavada supplying the defect of the Vidhi text.

Raghunandana's illustration of Apurva sanction with reference to Janmastami ceremony.

Raghunandana illustrates the Apurva sanction with reference to the Janmastami ceremony, in which there is a mention of reward for the fasting to be observed on the occasion, but none expressly mentioned for the act of worship itself to be performed on that occasion.

Raghunandana's vindication of animal sacrifice in Durgapuja.

With regard to the Smriti text requiring animal sacrifices at the Durga Puja ceremony the following question is raised. There is a general Vedic Vidhi prohibiting the causing of injury to living beings. Therefore the Smriti text requiring the immolation of animals at the worship of the goddess Durga cannot be sustained. Raghunandana meets this objection as follows :

He says that a Pratishedha (negative Vidhi proper) has for its object the prevention of that which a man would do by his own inclination or passion, and as such, it cannot include the prevention of what a man is to do as a duty. Therefore there is no conflict.¹ Raghunandana also deals with Badha and Atidesha in his Tithitattva.

1. Tithitattva in Ashtabinsatitattva,
p. 40. (B.M. Dey's Edition.)

He illustrates the difference between a Pratishedha and a Paryudasa by the prohibition that one should not take food on the *day* of the eleventh day of the moon. He holds that in the event of the ekadasi expiring in course of the day, the above mentioned Vidhi requiring fasting for the whole day, would override the injunction that one should perform the Vishnu Puja after the expiry of ekadasi and should eat the relics of the offering.

Difference between Pratishedha and Paryudasa as illustrated by Raghunandana in his Malamasa-tattva.

Raghunandana has an elaborate discussion on the nature of Paryudasa in Malamāsātattva, section 12., with reference to the following text.

“Sraddha is not to be performed in the night &c,”¹

This is to be read with the text laying down that the Parvana Srādh is to be performed during the new moon (which may extend into the night). He sums up the discussion by the observation.

“Paryudasa occurs where there is an ascendancy of the positive clause and there is an inferiority of the negative clause, and where the negative clause comes after. On the other hand, where the inferiority is in the positive clause and the superiority in the negative clause, and where the negative particle refers to the essence (predicate) of the positive clause, there the negative clause is a Prasahya Pratishedha.”²

1 रात्री श्राद्धं न कुर्वीत रात्रौ शौचं तादृशं ।

सम्बन्धोऽस्य सूर्यं चैवाचिरोदिते ॥

2 प्राधान्यं विधेयं प्रतिषेधे प्रधानता ।

पर्युदासो स विज्ञेयो यतोत्तरपदेन नञ् ॥

अप्राधान्यं विधेयं प्रतिषेधे प्रधानता ।

प्रसह्यप्रतिषेधोऽसौ निश्चया सङ्ग यत्र नञ् ॥

Malamasatattwa P. 80.

Then he explains that ordinarily the non-compliance with the exception does not subject one to any punishment (penance), such non-compliance only making the act ineffectual. But he shows by referring to some cases that in exceptional cases the non-compliance may be visited with penance (punishment). According to Jaimini the prohibition in such a case would be rather called an Anārambha Pratishedha. But Raghunandana says that the prohibition in such cases should be taken in the double light of a Pratishedha and a Prayudasa. I need hardly point out to you that this view of Raghunandana would be at variance with the Dwayo Pranayanti maxim.

Laghava
axiom.

Raghunandana illustrates the Laghava axiom *i.e.*, the axiom requiring simplicity with reference to a number of texts regarding the performance of the Sradh.

Atidesha
principle.

Raghunandana discusses the Atidesha principle and defines it following Jaimini, with reference to a text laying down that the eldest son is not to offer the *Pinda* on a certain day of the moon.

Section II. The utility of the presumptions of the substantive law in matters interof pretation.

Principles
underlying
Smriti texts.

In order to determine the meaning and force of particular Smriti texts, a knowledge of the principles which underlie the whole of the Smriti law is sometimes necessary. When the language of a text is not clear it is often necessary to be guided by established presumptions of the substantive law in which the text occurs. This has been shown by Maxwell in his well-known book on the interpretation of statute law.

Jaimini's treatise very largely deals with the principles of the laws of sacrificial acts, and the examples of interpretation given by him have mainly reference to the presumptions arising from the sacrificial laws, such as those regarding Darsa Purnamasi, the Agni-hotra and the like. But his Sūtras are not altogether silent on principles of civil law. He has in fact dealt with the fundamental principles of the Smṛiti law, though he has not gone very far in this direction.

Jaimini's Sūtras are not altogether silent of civil law.

Jaimini lays down three great presumptions of the substantive Smṛiti law, which serve as beacon lights to interpretation. They are as follows:—

The three great presumptions of the substantive Smṛiti law.

- (1) Every Aryan is to make religious sacrifices.
- (2) Every Aryan is to seek knowledge.
- (3) Every Aryan is to have a family.

These are called the *three debts* of an Aryan.

Jaimini lays down these three propositions in what is called the Maxim of the three debts. The Sūtra on the subject runs thus:—

The maxim of the three debts.

“Of the Brahmin sacrifice, learning and family life (are absolute duties) being joined with the word debt.”¹

Savara Swami explains the maxim at full length. He points out that there are the Vedic texts:

“One must pray and sacrifice by sacrificial acts.”²

1 ब्राह्मणस्य तु सोमविद्यापञ्चाशत्पञ्चाक्यं संयोगात् ।

Jaimini VI. ii. 31.

2 सोमेन यजेत ।

Taittiriya Samhita (2, 5, 6. 1.)

"The Brahmana must assume the sacred thread in the eighth year."¹

"One must beget children."²

The maxim points out that the duties indicated in these Vedic texts, are absolute and hold good for all classes of Aryans. The author says they are absolute, because these three classes of duties are mentioned as debts in the following Vedic text :

"A Brahmana becomes free of his debt to the gods by sacrifice, that due to the Rishis by austere learning of the Vedas, that due to the forefathers by begetting son."³

There it is argued that although only the word Brahmana is used, the rule applies to all Aryans.

Savara Swami further refers to the following passage of the Vedas as illustrating the maxim.

"In every spring season sacrifice and pray by the brilliant light, during whole life practise invocation by fire, as also pray and sacrifice by the new and full moon celebration. Similarly acquire learning, similarly be father of sons."⁴

1 गर्भाष्टमेषु ब्राह्मणम् उपनयोत ।

Taittiriya Samhita (2. 5, 6, 1.)

2 प्रजाम उत्पादयेत् ।

Taittiriya Samhita, do.

3 जायमानो हिमे ब्राह्मणस्त्रिभिस्तनैः वा जायते यज्ञेन देवेभ्यो ब्रह्मचर्येण ऋषिभ्यः प्रजया पित्र्यैः एव वा चतुर्थो ।

Taittiriya Samhita (6. 3, 10, 5).

4 वसन्ते वसन्ते ऋषिर्वा यजेत, यावज्जीवम् अग्निहोत्रं कुर्याति, यावज्जीवम् दर्मपूर्वमासाभ्यां व्रजेत । तथा विद्यामचीयीत । तथा प्रजा उत्पादयितव्या इति ।

Savara's commentary.

Therefore, in interpreting texts relating to the duties and rights of the Hindus, these principles must always be kept in view, and it should be presumed that all texts are more or less intended to promote these three classes of duties.

The presumptions arising from the above maxim are :

- (1) The presumption in favour of securing spiritual welfare.
- (2) That in favour of encouraging learning and skill.
- (3) That in favour of the family institution.

Jimutavahana in treating the principles of succession discriminates between the Sruti texts, many of which are conflicting with one another, mainly relying on the presumption in favour of spiritual welfare. This theory of spiritual benefit is identical with the principle of *Swarga kâmo yajeta*.

The three presumptions relied upon by digest writers.

In interpreting the texts about self-acquisitions, regard is tacitly paid by him to the principles in favour of encouraging Vidya (learning).

Vijnaneswara in treating the subject of right by succession, guides himself by almost exclusively following the presumption in favour of the family institution. In fact, the maxim of the three debts which Jaimini lays down forms the keynote and constitutes the nucleus of those nice and elaborate principles which have been developed later on.

It is greatly interesting to observe how faithfully the Hindu nation has followed the Vedic commands regarding sacrifice, learning and household. They have been trying to discharge the three debts in right earnest all through of their existence.

The great influence of the three debts.

The debt to the gods, *viz.*, that of sacrifice was in former times to be satisfied by performing Yāgas and Yajnas at stated times and occasions. Latterly, the life of every individual from birth to death is, at every stage, impressed with a part-payment of this debt. A Hindu must be conceived in the womb with a sacrifice, learn to eat with a sacrifice, learn to begin the student life with a sacrifice, marry with a sacrifice, and die with a sacrifice.

Then as regards the debt to the Rishis, that of learning. This debt was in early times perhaps more sedulously paid than latterly. The study of the Vedas lead to the study of the Vedangas (branches of the Vedas), grammar, astronomy, the art of music, the art of medicine, the art of using weapons of war &c.

The debt to the forefathers, that of perpetuating the family name and the family history lead to various means of discharging it, in the shape of availing of the various kinds of substituted sons of which at present the son by adoption only is in vogue.

The civil law of the Hindus is at every step marked with the influence of the three debts. Matters of right and status are mixed up with the debt to the gods, *viz.*, that of sacrifice. Privileges are unsparingly conferred on men of learning. Gifts to them are praised as being acts of the greatest merit. In fact, some of the Smritis go too far, almost to an abuse of this principle relating to the debt to the Rishis.

Then as regards the other debt consisting of household duties, the Hindu Law is marked with the impress of it in various shapes, such as the invariable duty of maintaining dependent members of the family,

the requisition to make adoptions, the presumption in favour of joint family and the like.

Therefore it is clear that whenever two constructions of a text are possible, one tending to the discharge of one or other of three debts, and the other inconsistent with such discharge, the former construction is to be adopted and not the latter.

I may tell you here that, as regards the institution of the family, though it is primarily an existing relationship by blood, the tie of the family is extended in various ways. A family counts as its members not only the living but even those who are dead and thus past the world of blood and flesh. The members are in fact connected to each other by the double tie of relationship and of religious duties. Where a son is born, a father has to perform the Putreshti Yāga and after the father dies, the son has to perform the Pitri Yagna (Sradh).

The pervading influence of the family institution.

Then, again, in performing religious sacrifices during life, the father, son, wife and in fact all the members of the family, and in some cases, all persons belonging to the same *Gotra* and *Pravara* have to join together on certain occasions.

Even the Sudra servant belonging to the family is also regarded as the member of the family, for he also serves certain religious purposes. Jaimini referring to the rule of giving away the whole of one's possessions lays down the principle,

"That a Sudra (servant) cannot be given away, for he is required by the Shastras for subserving the purposes of religion."¹

¹ यद्रथ धर्मशास्त्रान् ।

Jaimini VI. vii. 6.

In fact, as regards the Sudras, you have already seen that they are not regarded by Jaimini in that contemptible light in which some of the Smṛiti writers treat them. In the discussion on the subject of the disability of a Sudra to perform a sacrifice, Jaimini puts all sorts of arguments in favour of the Sudra's right to a sacrifice in the strongest light. Of course, he was bound to declare against the right of the Sudra to sacrifice by virtue of some positive texts. But for himself, he concludes the discussion by saying that the reason why a Sudra is debarred from sacrificial acts is that he is not open to teaching.¹

Thus in a certain sense a Sudra servant is a member of the family.

For some purposes even the preceptor and the pupil are regarded as members of the family. So the Hindu conception of a family is very extensive.

I wish I could explain to you certain terms which more or less bear on the idea of the Hindu family institution such as Gotra, Pravara, Sagotra, Sapinda, Gotraja, Sakulya, Samanodaka and Bandhus. But I am afraid this would not be quite within my province. So you must yourself carefully study these expressions, especially the term Sapinda as to the signification of which there is a difference between the Dayabhaga school and the Mitakshara school.

¹ मुद्रश्च धर्माभाजलान् ।

Jaimini VI. vii. 6.

LECTURE X.

Section I. Interpretation of Hindu Law regarding adoption by the Courts under the English Rule.

I have given you an idea, in the preceding two lectures, of the way in which Jimutavâhana, Vijnâneswara and other text writers and commentators interpreted the Hindu Law as they found it. In this lecture I propose to indicate to you, the manner in which the English Judges and the Anglo-Indian Courts have performed the task imposed upon them of construing the Hindu Law. Their ignorance of the Sanskrit language and of the Mimansa principles of interpretation was a great stumbling block in their way. But in spite of these difficulties they have fairly done their duty in this respect, although owing to these difficulties what they have done cannot be said to have been satisfactory all along the lines.

General remarks.

First of all, we shall see what broad rules of construction they have laid down in the place of the Mimansa principles of interpretation with which they were not acquainted. In the second place, we shall examine how, in particular cases, they have interpreted specified texts. The cases so settled by them are now by themselves authoritative law, purporting to be authoritative interpretations of the Hindu codifiers of old.

I. CASES LAYING DOWN BROAD RULES OF
CONSTRUCTION OF THE HINDU LAW
BY THE ANGLO-INDIAN COURTS.

In *Collector of Madura vs. Moottoo Ramalinga Sattupathy*, 12 M.I.A. 437 ; 10 Weekly Reporter 17, which was a case, with regard to the question whether a Hindu widow can adopt with the consent of her nearest kinsmen in the absence of her husband's permission, their Lordships of the Privy Council, Lord Westbury, Sir James W. Colvile and others lay down the following general rules :—

Rules laid down by the case of *Collector of Madura v. Moottoo Ramalinga* substantially correspond to Mimamsa principles.

(a) *Clear proof of usage will outweigh the written text of the law.*

“The duty of an European Judge who is under the obligation to administer Hindu Law is, not so much to inquire whether a disputed doctrine is fairly deducible from the earliest authorities, as to ascertain whether it has been received by the particular school which governs the district with which he has to deal, and has there been sanctioned by usage. For under the Hindoo system of law, clear proof of usage will outweigh the written text of the law.”

(b) *No weight should be given to texts from works unknown and of doubtful authority.*

“The industry and research of the counsel in the Courts below have brought together a *catena* of texts of which many have been taken from works little known and of doubtful authority. Their Lordships concur with the Judges of the High Court in declining to allow any weight to these.”

(c) *Sanctioned usage may be evidenced by opinions of pandits and decided cases.*

"The evidence that the doctrine for which the respondents contend has been sanctioned by usage in the south of India, consists partly of the opinions of pundits, partly of decided cases. Their Lordships cannot but think that the former have been too summarily dealt with by the Judges of the High Court."

Following the above principles their Lordships hold that "upon the whole, then, their Lordships are of opinion that there is enough of positive authority to warrant the proposition that according to the law prevalent in the Dravada country, and particularly in that part of it wherein this Rammad Zemindary is situate, a Hindu widow, not having her husband's permission, may, if duly authorised by his kindred, adopt a son to him. And they think that that positive authority affords a foundation for the doctrine safer than any built upon speculations touching the natural development of Hindu Law, or upon analogies, real or supposed, between adoptions according to the Dattaka form, and the obsolete practice with which that form of adoption co-existed, raising up issue to the deceased husband by carnal intercourse with the widow. It may be admitted that the arguments founded on this supposed analogy are in some measure confirmed by passages in several of the ancient treatises above referred to ; and, in particular, by the Dattaka Mimânsâ of Vidya Narainsamy, the author of the Madhavyam ; but as a ground for judicial decision these speculations are inadmissible, though as explanatory arguments

to account for an actual practice they may be deserving of attention."

What their Lordships lay down in this case may be more fully put as follows :

1. General texts which must necessarily be more or less obscure are to be construed, more with reference to the questions as to whether the texts have been received by the particular school, and how it has been applied and sanctioned by the usage of the people of that school, than with reference to the effect of the verbal construction of the texts.

2. That when a rule of law is positively determined on the basis of such a principle, considerations of analogy, real or fancied, between the texts in question and other texts which have become more or less obsolete, should have no weight against such a rule.

3. That in determining the rule of law on the basis of the principle stated above, evidence of opinion of leading and learned men (pundits) belonging to the community, and that afforded by the judicial opinions of gentlemen concerned in judicial administration should be accepted.

You will observe that the principles laid down by their Lordships substantially accord with the principles of the Mimânsâ Shâstra. You have seen that what the Mimânsâ writers inculcate under the head of Padârtha Prâbalyâdhikarana, and what Jaimini says in the leading Sutra of that Adhikarana, viz., 'without reference to causes, usages prevail,' correspond to principles 1 and 2. And as regards the third principle touching the question of evidence, what the Mimansakas and the

Smṛiti writers lay down under the head of Shistachara supports this principle.

II. CASES INVOLVING MORE OR LESS THE INTERPRETATION OF SPECIFIED TEXTS.

The principle of construing text-law, not so much by its words as by the usage which has gathered to it, as laid down by their Lordships, in the Collector of Madura and other cases, does not shut out the necessity of verbally construing the Sanskrit text of the Hindu Law. On the contrary, the said principle opens the door to the subject of verbal construction. For where a certain text-book has been received and acted on, its words must be construed, especially where it is a book not of uncertain antiquity, but is a regular treatise of comparatively recent times, such as, the Dayabhaga and the Mitakshara or the Mayukha or the Viramitrodaya &c. Their Lordships of the Privy Council have, at least, in some measure, resorted to such verbal construction in settling particular points which arose in some recent cases.

Cases showing where verbal construction has been resorted to.

In the case of *Balwant Singh v. Rani Kishori* I. L. R. 20 All. 267, their Lordships had principally to construe the following texts ; namely, (A) clause 27, Sect 1, (B) clause 21., (C) clauses 9 and 10, Sect. 5 and (D) clauses 1 and 2 of Sect. 4. Ch. I. of the Mitakshara as translated by Mr. Colebrooke.

Now let us see what these texts are :

(A) Clause 27, Sect. 1, Ch. I., runs as follows :

“ Therefore it is a settled point, that property in the paternal or ancestral estate is by birth, [although] the father have independent power in the disposal of

effects other than immovables, for indispensable acts of duty and for purposes prescribed by texts of law, as gifts through affection, support of the family, relief from distress, and so forth: but he is subject to the control of his sons and the rest, in regard to the immovable estate, whether acquired by himself or inherited from his father or other predecessor; since it is ordained, "Though immovables or bipeds have been acquired by a man himself, a gift or sale of them should not be made without convening all the sons. They who are yet unbegotten, and they who are still in the womb, require the means of support, no gift or sale should therefore, be made."¹

(B) Clause 21, rather that part of clause 21, which forms Vijnaneshwara's explanatory note to two Smṛiti passages, one from Jajnyavalkya himself, and which is this: "They both relate to immovables which have descended from the paternal grand-father."²

(C) Clauses 9 and 10 of Sect. 5 run as follows:—

"So likewise, the grandson has a right of prohibition, if his unseparated father is making a donation, or a sale, of effects inherited from the grandfather: but he has no right of interference, if the effects were

1. तस्यात् पैटके पैतामहे च द्रव्ये जन्मैव स्वत्वम् । तथापि पितुरावश्वकेषु
वर्णकृतेषु वाचनिकेषु प्रसाददान कुटुम्बभरणपञ्चमोक्षादिषु च स्थावरव्यतिरिक्त
द्रव्यविनिर्गोत्रे स्वातन्त्र्यामिति स्थितम् । स्थावरे तु स्वार्जिते पित्रादिप्राप्ते च
पुत्रादिपारतन्त्र्यामेव । स्थावरं द्विपदं चैव यद्यपि स्वयमर्जितं असम्भूय सुतान्
सर्वान्न हानं न च विक्रयः । ये जाता येऽप्यजाताश्च ये च गर्भे व्यवस्थिताः । इति
च तेऽभिज्ञाद्वन्ति नदानं न च विक्रयः इत्यादि स्मरणात् ।

Colebrooke's Mitakshara Ch. I, Sect. 1, para 27.

2. तत्पितृपुत्रपौत्राणां स्थावर विषयम् ।

acquired by the father. On the contrary, he must acquiesce because he is dependent."¹

"Consequently the difference is this : although he has a right by birth in his father's and in his grandfather's property ; still since he is dependent on his father in regard to the paternal estate, and since the father has a predominant interest as it was acquired by himself, the son must acquiesce in the father's disposal of his own acquired property : but since both have indiscriminately a right in the grandfather's estate, the son has no power of interdiction [if the father be dissipating the property]."

(D) Clauses 1 and 2, sect. 4, which are as follows :

"The author explains what may not be divided, 'whatever else is acquired by the co-parcener himself, without detriment to the father's estate, as a present from a friend, or a gift at nuptials does not appertain to the co-heirs. Nor shall he, who recovers hereditary property, which had been taken away, give it up to the parceners ; nor what has been gained by science.

"That which had been acquired by the co-parcener himself without any detriment to the goods of his father or mother or which has been received by him from a friend, or obtained by marriage, shall not apper-

१. तथा विभक्तेन पित्रा पैतामहे द्रव्ये दीयमाने विक्रीयमाणे वा पौत्रस्य निषेधेऽप्यधिकारः । पितृर्जिते तु न निषेधाधिकारः । तत्परतन्वत्वात् । अनुमतिस्तु कर्त्तव्या । तथाहि । पैतृके पैतामहे च सामं यद्यपि जन्मैव तत्रापि पैतृके पितृपरतन्वत्वात् पितुः स्वार्जकत्वेन प्राध्यान्यात् पित्रा विनियुज्यमाने स्वार्जिते द्रव्ये पुत्रेणानुमतिः कर्त्तव्या । पैतामहे तु द्वयोः स्वायत्तविशिष्टमिति निषेधाधिकारोऽप्यस्तीति विज्ञेयः ।

Mitakshara Ch. I, Sect. V, paras 9 and 10.

tain to the co-heirs or brethren. Any property, which had descended in succession from ancestors, and had been seized by others, and remained unrecovered by the father and the rest through inability or for any other cause he, among the sons, who recovers it with the acquiescence of the rest, shall not give up to the brethren or other co-heirs : the person recovering it shall take such property."¹

In the case before their Lordships, the plaintiffs relying on clause (A) contended that an alienation by a father of self-acquired property is void. But clauses (B), (C) and (D) were contradictory to clause (A), and were relied on by the defendants. Their Lordships, after pointing out that the clause (A) relied on by the plaintiff conflicts with those mentioned after it, decide as follows :

That the effect of clause 27 is that, it does not negative the father's right to alienate his self-acquired property, but that it only shows that his alienation may not be morally right. In fact, their Lordships adopt Sir Francis Macnaghten's opinion on the point, which is also shown to have been adopted by Sir Thomas Strange, and substantially acted on by the High Courts of Bengal and Allahabad. Thus their Lordships do not exclusively proceed on the construction of the text, but also partly follow the principle laid down in the case of the Collector of Madura. This principle, however, which is, in substance, that of the Padartha Prabalya Adhikarana, is perhaps not quite legitimately applicable

1. मातापितृद्वयविराजितं यत्स्वयमर्जितं मिदसकाशान् यज्ञस्य विवाहस्य दद्यादानां धातृणां तन्न भवेत् । इत्यादि । Mitakshara.

to the case. For here, there is a well recognised text book of law, the Mitakshara, governing the parties which is pretty full and explicit. The construction of the texts of this book should alone be decisive of the question raised.

Their Lordships have, in fact, construed the texts and the conclusion arrived at by this construction is not open to objection by any Mimansa rule. It happily coincides with the result which might be arrived at by the orthodox Mimansa rules of construction, only that by applying the Mimansa rules to the case, the work would have been done in a shorter and clearer way. So it will not be unprofitable to you to examine how the Mimansa rules would apply to the case.

Construction of the texts by their Lordships of the Privy Council is in accord with the Mimansa rules.

At the outset, you should observe that the words quoted by their Lordships from clause 21 section 1 should be eliminated from consideration, for the simple reason that these words are the words of the Purvapakshin (the party whose views are refuted) which are to the effect that the property is by succession and not by birth. Then, coming to the text mainly in question, that contained in clause 27 section 1, is not obligatory by the well-known Mimansa rule that what is recited as a reason does not of itself form an obligatory text. This is laid down in Hetubadnigadadhikarana, so often misunderstood. This Adhikarana, it is true, does not say that the principal clause, in support of which a reason is recited, becomes bad for the recital. But it clearly says that what is recited as the reason is not itself obligatory. Now applying this maxim to clause 27, it becomes clear that all the words, from "since it is ordained" to the end of the clause, have not the force of a Vidhi.

Examination as to the application of Mimansa rules.

Then, there remain the words, "But he is subject to the control of the sons and the rest, with regard to the immoveable estate, whether acquired by himself or inherited from his father or other predecessor," which words are to be read with the opening words, "property in the paternal or ancestral estate, is by birth," by the Mimansa Ekavakyata principle, and so read, become subordinate and incidental.

Then against the above words, clauses 9 and 10 of section 5 are to be considered.

Clause 27, in general language treats ancestral and self-acquired property on the same footing. Such a treatment is contained in general terms, whereas clauses 9 and 10 constitute a special rule, making a distinction between ancestral and self-acquired property. Therefore, by the well-known Mimansa maxim called the Samanya Vishesha Adhikarana, the special clause prevails over the general. Clauses 9 and 10 of section 5 prevail over clause 27 by virtue of another maxim as well, *viz.*, the Apaccheda maxim. By that maxim, as explained by the Mimansa writers, when there is a conflict between two passages in the same work, the passage that comes after bars the one that precedes. Thus, both by the Samanya Vishesha maxim and the Apaccheda maxim, the clauses which lay down that, in respect of the self-acquired property of the father, the sons have no power to interfere with the disposal of it by the father, must prevail. Thus the right that a son acquires by birth in the father's self-acquired property is reduced only to a claim of maintenance out of it, so long as the father does not dispose of it. The existence of such a claim merely

shows a moral or spiritual duty on the part of the father, as Jimutavahana explains it. The decision of their Lordships of the question in this case, is thus borne out by the text of the Mimansa principles.

I am afraid, however, the same cannot be said with reference to their Lordships' decision with regard to the question of the validity of the adoption of an only son, which arose in the case of *Sir Balasu Guru Linga Swami v. Sir Balusu Ramalakshmina and others*; *Radha Mohan, representative of Beni Prasad v. Hardai Bibi*, L. R. 26 I. A. 113. S. C. I. L. R. 21 All. 460. In this case the question was as to the validity or otherwise of the adoption of an only son. This question turned upon the construction of certain texts, among these the following are the principal :—

The decision as to the validity of an only son is not in accord with the Mimansa rules.

(1) Man formed of uterine blood and virile seed proceeds from his mother and his father as an effect from its cause.

(2) Therefore the father and the mother have power to give, to sell and abandon their son.

(3) But let him not give or receive in adoption an only son.

(4) For he must remain to continue the line of ancestors.

(5) Let a woman neither give or receive a son except with her husband's permission.¹

1. यत्प्रोक्तमस्मिन् पुत्रो मातापितृ निमित्तकस्तस्य प्रदानविक्रयपरित्यागेषु मातापितरौ प्रभवतः न त्वेकं पुत्रं दद्यात् प्रतिशृङ्गोवादा स हि सन्तानाय पूर्व्वेषाम् ।

Vasishttha.

See Buhler's translation given in Maxmuller's series of the Sacred Books of the East.

The text of Saunaka on this point is similarly important.

“One having an only son should never give him in adoption ; one having several sons should give a son [in adoption] with every effort.”¹

A passage of the Mitakshara as well as one of the Dattaka Mimamsa also bear upon the question. But these are of secondary importance. Vijnaneswara and Nanda Pandit professedly follow the texts of Vashishtha and Saunaka, as has been shown before in the preceding lectures. Manu has not said anything directly on the question. But some passages of Manu's Smriti are referred to as incidentally bearing upon this question. These passages will also be considered after an examination of the texts of Vasishtha and Saunaka, which, as stated before, are the chief texts, on the construction of which the solution of the question depends. Now let us see what result is arrived at by construing these texts by the Mimamsa principles of construction.

Construction of the texts of Vashishtha and Saunaka as to the adoption of an only son by the Mimamsa rules.

Take first Vasishtha's text :

(1) “Man produced from virile seed and uterine blood proceeds from his father and his mother as an effect [from its cause]. (2) Therefore his father and mother have power to give, to sell, or abandon their son. (3) But no one should give or receive an only son (4) for he saves the man [from *put* or hell].”

You will see that if the passage be analysed in the light of the Mimamsa principles, the whole of it, barring the last sentence, resolves itself into two main parts ;

1. नैकपुत्रेण कर्तव्यं पुत्रदानं कदाचन ।

वद्वपुत्रेण कर्तव्यं पुत्रं न प्रयत्नतः ॥ Saunaka.

the first part consisting of sentences numbered (1) and (2) in the translation, laying down the Vidhi that parents have the power of selling their son. The second part consisting of sentences numbered (3) and (4) laying down that the father must not either give away or receive an only son. According to the Mimansa rule as to Vidhi and Paryudasa, the first proposition forms the general rule (Samanya Vidhi), and the latter an exception (Paryudasa). The result is that, a man can give away his son, except when that son is the only son ; the question of the case of the eldest son being separately dealt with. Again, each of the above two propositions is subdivisible into two parts, one part forming the mandatory part and the other a reason for it. The general Vidhi laying down the rule, that a father has power to give away his son, is supported by the reason that he, along with his wife, is the cause of his birth. According to the Mimansa principles the reason is an Arthavada or a mere explanation. The exceptional clause also is supported by a reason, and that reason too is an Arthavada. Some argue, as I have already stated, that the statement of a reason vitiates the Vidhi in support of which the reason is stated. If this were so, then, in the present case, not only the exception would go out, but even the general rule laying down the power of the parents to give away their sons. I have shown to you that there is no valid basis for the proposition that the statement of a reason vitiates a rule in support of which the reason is stated. I have shown that by the maxim called the 'Drishta Adhika-

rana,' the 3rd Adhikarana of the third chapter of the first Book of Jaimini, a corrupt reason invalidates a Vidhi, and not an indifferent far less a good reason. I have also shown to you that by the Hetubad-nigada Adhi karana, the reason stated is not to be taken as a condition precedent of the Vidhi, it is to be treated no more than as a mere recital. Thus the proposition prohibiting the adoption of an only son cannot be treated as a nullity because a reason is stated for it. The question, however, yet remains, whether the particular character of the reason stated in this case for the exception does not reduce to a nullity the exception itself. The reason stated is 'that an only son is required to continue the line of ancestors (of the family in which he has been born)', this reason is not corrupt reason within the meaning of the Drishtahetu Adhikarana. It has, however, been held in the judgment of their Lordships, that the whole of the proposition prohibiting the giving or taking in adoption of an only son is a mere religious or moral prohibition, and has not the force of positive law.

You have seen that according to the Mimansa writers as well as the digest writers, such as, Jimutavahana and Vijnaneswara, there are certain fixed and defined principles by which a proposition, which is apparently a Vidhi or exception, can be ignored as being merely a moral or religious precept. If this point had been left without any fixed principles to guide, it would have been a source of great uncertainty. Happily, not only Jaimini but both Vijnaneswara and Jimutavahana have laid down dis-

tinct and clear rules on this point. According to all these authorities a rule as to a matter which is within the cognisance of the King's Court, is not void, because that rule is supported by a purely spiritual reason.

You have seen that Jaimini's *Drishtahetu Adhikarana* takes exception to some worldly reasons, and would not allow such worldly reasons to serve the purpose of proper spiritual reasons. And as that *Adhikarana*, as you know, relates to the positive *Smriti* law, it thus maintains the superiority of spiritual reasons in respect of the positive law. Neither *Vijnaneswara* nor *Jimutavahana* denies this. They, however, lay it down that when a spiritual rule or direction clashes with an established rule of the *Vyavahara* law, then the former is to be taken as merely a monitory precept. So there must be a conflict before this can be done. That great jurist and *Mimansaist* *Sree Sankara Bhatta* in treating of the question of *Badha* (bar), lays down that, where an *Utpatti Vidhi* conflicts with a positive *Smriti Vidhi*, the latter bars the former. These authors do not even remotely hint that when a spiritual rule and a rule of *Vyavahara* law co-operate and harmonise with a spiritual reason, both are to be rejected as being monitory precepts. An instance of *Vijnaneswara's* view of the question is this. He says, that according to *Gautama's Smriti* text, a man has a proprietary right to a thing which he acquires for secular use. A priest acquires a thing by officiating at a sacrifice. So he has a right of property to the thing by the positive (*Vyavahara*) law. But there is a rule of the spiritual law, according to

which, he should not have acquired this property. Vijnaneswara says that this spiritual rule cannot be taken to interfere with the positive law. It must be taken to be a mere religious precept, for the breach of which the man may expiate in the best way he can but not by losing his proprietary right. So you see that this is a case of conflict between the positive and the spiritual law.

Similarly, you have the well known argument of Jimutavahana, stigmatised as the doctrine of *Factum valet*. His argument is that, it is a well-known rule of positive law that a man's self-acquired property can be used by him in any way he likes. But we come across the text of Vyasa, which says, a man should not sell or give away immovables and bipeds acquired by himself. He says that this must be treated as a moral precept, and a transaction done in violation of it must remain good. Here also there is a conflict. But what have we in the present case ? There is the prohibition of the gift of an only son. This is a clear proposition regarding a transaction which, none can deny, falls within the jurisdiction of the King's Courts, and is a matter of the positive (*Vyavahara*) law. It is coupled with a reason which is spiritual. But both are concordant. One does not clash with the other. This being so, to treat the whole proposition as merely monetary, is not warranted by the teachings of Vijnaneswara and Jimutavahana nor of Jaimini. If the mere presence of a spiritual reason were to reduce to a monetary rule what otherwise would be a clear *Vyavahara Vidhi*, then the rules of succession laid down by Jimutavahana would all be reduced to mere monetary rules.

Justice Mitter's observations in the case of *Rajah Upendra Lal Roy v. Sreemati Rani Prasannamayi* I. B. L. R. 221, perhaps have not been so well appreciated by their Lordships as they deserve. Justice Mitter's observations quoted by their Lordships are as follows :--

"The institution of adoption as it exists among the Hindus is essentially a religious institution. It originated chiefly, if not wholly, from motives of religion ; and an act of adoption is to all intents and purposes a religious act, but one of such a nature that its religious and temporal aspects are wholly inseparable". 'By a man destitute of male issue onl ' says Manu, 'must the substitute for a son of some one description always be anxiously adopted for the sake of the funeral cake, water and solemn rites.' It is clear, therefore, that the subject of adoption is inseparable from the Hindu religion itself and, all distinction between religious and legal injunctions must be inapplicable to it.

Vijnaneswara follows Vasishtha's text and says :

"So an only son must not be given [nor accepted]." For Vasishtha ordains "Let no man give or accept an only son."

There has been discussion as to the meaning of the word 'na deyah' which has been translated into 'must not,' it being suggested that the proper import of the word is 'should not.' But it should be remembered that the words of Vasishtha quoted forms a part of the same

1. तथा एकपुत्री न देयः । न त्वेवैकं पुत्रं दद्यात् प्रतिपत्नीयाद्वा इति वशिष्ठ स्मरणात् ।

Colebrooke's *Mitāksharā*, Chap. I. Sect. 11. Para 11.

sentence. So the force of the word should be determined by the principle of Vakya (reading together). This done, there can be no doubt the term has the force of 'must not' and not 'should not.'

Next as regards the text of Saunaka. This text has been cited by Nanda Pandit in the Dattaka Mimansa. It is as follows :

The words are 'nakarttavyam,' 'not to be made,' might, no doubt, be taken to mean 'should not be made.' But here again the interpreter would err if he ignored the Vakya (construction by context). The words 'Kadachana' which means 'in no case', read with the words 'should not be made', makes the sense to be one of unqualified prohibition.

Prohibition of
the adoption
of an only
son is the
result.

Then, again, as regards the texts of Manu, these go to impress, first, the essential importance of sons, and then the peculiar importance of the eldest son when there are many. These texts could only be used by the one side or the other by the principle of Linga. But the Linga principle applies only to a text, the words of which are not clear and unambiguous. But, in the case under consideration, the text of Vasishtha has been shown not to be of such a category. Further, the text of Manu has no direct suggestive power as to the intention of Vasishtha's text.

The result of a verbal construction of the texts, thus, is that the adoption of an only son is prohibited.

But there would yet be the further question whether there has been an established usage (Shistachara) to the contrary, which ought to prevail by the Padartha Prabalya maxim, and by the principle of the Collector of Madura's case. I shall not enter into a considera-

tion of this question, as my object is simply to illustrate how the Mimansa rules of interpretation are practically applicable, and not to discuss any particular point of law. But I may say this that their Lordships of the Privy Council did not find facts showing any uniform course of usage on the point in question. Be that as it may, the highest court has decided the point and there is an end of all discussions upon it.

Another leading decision of their Lordships of the Privy Council on the subject of adoption is, that relating to the question whether mother's sister's son can be adopted. This case is *Bhagwan Singh v. Bhagwan Singh*, L. R. 26 I. A. 153, S. C. I. L. R. 21 All 412. In this case their Lordships of the Privy Council decide the following points :—

Adoption of mothers' sister's son as well as that of daughter's and sister's son invalid.

(1) The adoption of a mother's sister's son by a Hindu of any of the three regenerate classes, Brahman, Kshatriya and Vaisya, equally with the adoption of a daughter's son, or a sister's son is contrary to law and void. The ancient texts condemning such adoptions are not only admonitions, but have been judicially decided to be prohibitions of law for such a length of time that, it is not now competent to a Court to treat them as open to question in this respect.

(2) The judgment in the *Collector of Madura v. Mutoo Ramalinga Sathapathy* gives no sustenance to the conclusion that in order to bring a case under any rule of law, laid down by recognised authorities for Hindus generally, evidence must be given of actual events to show that, in point of fact, the people subject to that general law, regulate their lives by it.

As regards the first decided point, the position

taken up in the judgment is unquestionable. If texts as to the character of which doubts might be raised touching the question whether they were obligatory or recommendatory, have been judicially acted upon for a long time as obligatory, then even by the Mimansa principle laid down in the Padartha-Prabalya maxim their obligatory character cannot be denied. The principal text which was the subject of consideration in this case is that of Saunaka, in a part of which the rule regarding the adoption of an only son also occurs.

Saunaka and Sakala on the invalidity of adoption of daughter's, sister's and mother's sister's son.

I have shown to you how Nilkantha, the author of the Vyavahara Mayukha, construes this text of Saunaka affecting the adoptibility of a sister's or a daughter's son. According to him, Saunaka does not recommend the exclusion of such relations from adoption, and this he makes out by applying the Mimansa principles to the case. But there is no doubt, however, that Sakala's text is clear and strong in showing the inelegibility of daughter's, sister's and mother's sister's son for adoption. And as this text has been relied upon by the special writers on adoption, the authors of the Dattaka Mimansa and Dattaka Chandrika, and has been respected in practice during a pretty long period, it is too late now to disregard the authority of the text of Sakala. Nevertheless, it is necessary to be on guard that the meaning of Sakala's text should not be extended beyond its words ; and, also that the extensive effect ascribed by some to the words 'having the reflection of a son' in the passage of Saunaka be not tacitly accepted as proper. Sâkala's text, apart from the

facts, that it has been long acted upon would certainly have counted very little in deciding the question. It is the fact of its having been long acted upon that invests it with authority by the Padārtha Prabalya Adhikarana as well as by the principle of the case of the Collector of Madura. Therefore the operation of that text cannot be extended by analogy or on the basis of the reasoning that may be supposed to underlie it. Sakala would except daughter's son, sister's son and the son of mother's sister. The exception cannot be extended to the son of any woman whose father was of the same Gotra with the would-be adopter. Such an extended exclusion has been erroneously sought to be introduced by an extravagant construction of certain words of Saunaka in his wellknown passage on the subject. The words are "having smelt the forehead of the child, and having with cloths and the like adorned the boy bearing the reflection of a son &c." These words are intended manifestly to describe how the adopter is to do certain acts towards the boy, and how the boy would appear when these acts are being performed, *viz.*, that he would bear the reflection of a son. The words 'bearing the reflection of a son' cannot be detached from its place to make it serve the purpose of a Vidhi to the effect that he should be born of the womb of a female other than of the same Gotra.

Mr. V. Mandalik's explanation of the words 'having the reflection of a son' is convincing. See Mandalik's Book, p. 414, ll. 7-18.

Nanda Pandit's dictum starts a new idea which is not to be found in Saunaka's passage. But this idea is against Nanda Pundits' own argument against Medha-

tithi that the question of procreation has nothing to do with the question of the substitution of a son.

Their Lordships of the Privy Council in the case of *Bhagwan Singh v. Bhagwan Singh*, decided the case of the mother's sister's son and held it to be invalid ; they also *a fortiori* held the adoption of the daughter's son and sister's son to be invalid among the three higher classes. But the exclusionary rule should not be extended further to the full extent of Mr. Sutherland's dictum based on the effect of the phrase 'bearing the reflection of a son' occurring in Saunaka's passage.

As regards the second point, it is clear that in the presence of judicial decisions, other evidence may be dispensed with.

Section II.—Cases decided by the Courts under the English rule regarding the Hindu usage and custom.

Before concluding this Lecture I shall tell you a few words with reference to the decided cases of our Courts relating to the subject of usage and custom.

You have seen from what I have told you in the fourth Lecture that both Jaimini and the Smriti writers recognise the validity of family and tribal customs as well as local customs regarding matters of Prayoga and Viniyoga, that is, regarding matters of common life ; though Jaimini by the Holaka maxim seeks to maintain uniformity as regards the religious institutions of the community, that is, as regards matters of Utpatti Vidhi. In short, the result of Jaimini's two Adhikara-

nas—the Padārtha Prabalya Adhikarana and the Holā-kā Adhikarana jointly lead to the following result :

Local and family tribal customs are to prevail, provided they be not inconsistent with the general principles of the Vedic law. Thus local customs and those belonging to particular sections of the community must be jealously examined, so that they do not unnecessarily jeopardise the general guiding rules of the society. This being the result of the Mimansa principles on the subject, the following cases are only in harmony with those principles :

Customs in harmony with the Vedas prevail.

A custom is a rule which, in a particular family or a particular district has, from long usage obtained the force of law. It must be ancient, certain and reasonable, and being in derogation of the general rules of law, must be construed strictly. *Hurpurshad v. Shio Dyal*, L. R. 3 I. A. 259 : 26 W. R. 55. :

Decided cases harmonize with the Mimansa principles.

A custom which has never been judicially recognised cannot prevail against distinct authority. *Narasamal v. Balarama Charlu*, 1 Mad. H. C. R. 420.

If it is contended that the succession to property is regulated by any special family custom, that custom ought to be alleged and proved with distinctness and certainty. 15 W. R. P. C. 47 ; see also 17 W. R. P. C. 553 ; 14 M. I. A. 570 ; L. R. 5 I. A. 87 ; I. L. R. 1 All. 688.

When amongst Hindus (and Jains are Hindu dissenters) some custom different from the normal Hindu Law and usage of the country in which the property is located, and the parties resident, is alleged to exist, the burden of establishing its antiquity and invariability is placed on the party averring its existence, and it should

be proved by clear and unambiguous evidence above suspicion. *Bhagwandas Tejmal v. Rajmal alias Hiralal Lachman das*, I. L. R. 10 Bom. H. C. R. 241.

By the Holaka maxim, the Mimansakas lay down in their own way as a condition that a custom or usage should be reasonable and certain ; and by the Padartha Prabalya maxim it is settled that a practice must be of some standing, in order to be valid ; and the Drishta-hetu maxim virtually requires that an usage in order to be valid must not be based on any corrupt motive, but that it must be reasonable. Now, in order to see how far the decided cases of our present law Courts conform to these principles, the following cases should be examined.

According to Hindu law, in order that a custom may have a force of law, it must be shown to have existed from time immemorial. *Luchmal Lal v. Mahon Lal Bhaja*, 16 W. R. 179.

Under the Hindu system of law a well-defined usage acquires the force of law. *Gunga Huree v. Raghabram*, 23 W. R. 131.

The prevalence in any part of India of a special course of descent in a family differing from the ordinary course of descent in that place, stands on the footing of usage or custom of the family, capable of attaching and of being destroyed equally, whether the property be ancestral or self-acquired. *Surendranath v. Heeromonee*, 10 W. R. P. C. 35 ; 12 M. I. A. 81.

Where a custom is proved to exist, it supersedes the general law, but the general law still regulates all beyond the custom. *Neelkristo Deb v. Beerchuder Thakur*, 12 W. R. P. C. 21 ; see also I. L. R. 5 A. 542.

Custom not allowing adoption may govern a family not subject to Hindu law. *Raja Bishanath Singh v. Ram Charan Mazumdar*, S. D. A. 1850, p. 20 may be referred to, as showing that even in a Hindu family there might be a custom which barred inheritance by adoption. See the case of *Fanindra Deb Raikat v. Rajeshar Das* I. L. R. 11 Cal. 463 ; L. R. 12 I. A. 72.

As regards immoral usages the wide rule laid down in the *Drishtahetu Adhikarana* of the fourth Lecture being to the effect that, if any gross motive be seen to underlie a Smṛiti text, that text is not good law ; a *fortiori* usages based on immoral motives are not fit for enforcement. On this point see the following cases.

R. v. Karsan, 2 Bom. H. C. 117 ; *R. v. Mandhar*, 5 Bom. H. C. (C. C.) 17 ; *Uji. v. Hathi*, 7 Bom. H. C. (A. C. J.) 133 ; *Narayan v. Laving*, I. L. R. 2 Bom. 140 ; *Mathura v. Esu*, I. L. R. 4 Bom. 545 ; *Chinna Ummayi v. Tegarai Chetti*, I. L. R. 1 Mad. 168.

It is not within the purview of my lectures to present to you the case law on all topics of the Hindu Law. It is necessary for me only to illustrate the principles of interpretation laid down in the Hindu Shāstras, especially the *Mimāṃsā* Shāstra, by selecting some such leading cases on certain important topics of the Hindu Law as bear a relation to these principles of interpretation. I think the topics and the cases thereon that I have referred to in this Lecture would be sufficient for the purpose.

LECTURE XI.

RESEMBLANCE OR OTHERWISE BETWEEN THE HINDU LEGAL MAXIMS AND PRINCIPLES OF INTERPRETATION AND THOSE OF THE MODERN EUROPEAN LAW.

This lecture divides itself into two parts : -

1. Resemblance or otherwise between the two systems as regards those formulae of interpretation known as maxims.

2. Resemblance or otherwise between the two systems, as regards the general lines of interpretation.

Section 1.—General resemblance between western Legal Maxims and Hindu Legal Maxims.

The first and foremost of Maxims in Broom's Legal Maxims is the following :

(i) *Salus Populi suprema Lex.*—Regard for the public welfare is the highest law.

Maxims on
public policy
and Legisla-
tive policy.

The maxim means that interest of the individual should be sunk in that of the community.

The Hindu lawyers put it somewhat transcendently. According to them, the best interest of the individual is that of the mankind. So Yājñyavalkya has it as follows :

“Of all acts—[such as] sacrifices, ceremonial observances, repression of sensual desires, harmlessness, gifts, and the study of the Vedas, this is the best

dharma, [namely] viewing one's own self as merged in humanity."¹

Any how the maxim in question is not foreign to the Hindu Law. Broom puts under this maxim cases in which the interests of individuals have been compromised in furtherance of works of public utility. Such a compromise of individual interest, in fact, sacrifice of it for the sake of public good is declared to be proper by the Smṛiti Law.

Savara Swami quotes the following text as showing the spirit of the Smṛiti Law.

"Tanks should be dug."

"Public roads should be constructed."

Thus, if it is ordained that money is to be expended by individuals for public road &c, then they are required to put up with inconveniences individually for the convenience of the public.

In the *Mitāksharā* in the section on impartible properties, *Yogakshema* is explained to mean works of public utility, by performing which the blessing acquired by pious acts is conserved.

(ii) *Necessitas Inducit Privilegium quoad Jura Privata*.—With respect to private rights, necessity privileges a person acting under its influence.

Necessity, as contemplated in the above rule, is said to fall under three different heads: 1. necessity of self-preservation; 2. necessity of obedience; 3. necessity resulting from the act of God or of a stranger.

As regards the first head, there is the following example among others:

Where two persons, being ship-wrecked, have got

1. Institutes of Yājñyavalkya, Achārādhyāya Ch. I, S. 8.

on the same plank, but, finding it not able to save them both, one of them thrusts the other from it, and he is drowned ; this homicide is excusable through unavoidable necessity, and upon the great universal principle of self-preservation which prompts every man to save his own life in preference to that of another, where one of them must inevitably perish.

The principle of this maxim is fully recognised in the Hindu Shâstras.

The Mahâbhârata deals with it in an especial chapter called Apaddharma (duty in times of calamity).

Examples of deviation from ordinary duties in times of calamity are also given in the Smritis. For instance, Yâjnyavalkya says :

“ Having suffered starvation for three days a man may take the grain of others except that of a Brâhm-ana, but should pay and confess when complained against.”¹

(iii) *Summa Ratio est quæ pro Religione facit.*— That rule of conduct is binding which is consistent with religion.

It needs hardly be said that this maxim only faintly represents that fundamental principle of the Hindu Law, which lays down that the Smriti (common law) must be either actually or constructively derivable from the Vedas.

(iv) *Leges posteriores priores contrarius abrogant.*— When the provisions of a later statute are opposed to

1 बुभुक्षितस्त्राणं स्थित्वा चान्यमत्राह्वयामरेत् ।

प्रतिग्रह्य तदाख्येयमभियुक्तो न धर्मतः ॥

Mandalik's edition, Prâyaschittwa Adhyâya, S. 43.

those of an earlier, the earlier statute is considered as repealed.

No statute law is contemplated by the Hindu Law ; and the Smritis are presumed to have come into existence simultaneously. Yet the principle of this maxim is well recognised by the Shâstras.

On the basis of the Apachheda maxim it is laid down by the Shâstra writers that, what follows supercedes what goes before. ¹

(v) *Nova Constitutio futuris Formam imponere debet non præteritis.*—A legislative enactment ought to be prospective, and not retrospective, in its operation.

There being no idea of legislation in the Hindu Law, there cannot be any counterpart of this maxim, in its strict form in the Shastras. But, as a principle of Jurisprudence, it is laid down in the Mimansa Shastra, that a text which relates to events as a matter of history cannot be regarded as a Vidhi, but is to be taken as a Bhutarthavada (recital of what has happened). It is also laid down that the very conception of a Vidhi is what is to be done in the future (Apraptaprapaka), and not what has been an accomplished fact beforehand (Praptaprapaka).

(vi) *Ad ea quoe frequentius accidunt jura*

1 पूर्वं परेण । यथा “यदुद्घाताऽपच्छिद्यते
अदच्छिद्यो यज्ञः परिसमाप्यते यत्पूर्वच्छिन्नास्त्रमुखात्
तत् दद्यात् । यदि प्रतिष्ठतां सर्ववेदसं दद्याद्”ति
इयौ निमित्तयोर्बै नैमित्तिके विहिते तत्र निमित्तपौर्वापर्ये
परेण नैमित्तिकेन पूर्वनैमित्तिकं बाध्यते ।

Sree Bhatta Sanker's Mimāṃsā Bāla Prakash p. 181.

adaptantur:—The laws are adapted to those cases which most frequently occur.

For the same reason that the idea of legislation is foreign to the Hindu Law, we cannot expect a counterpart of this maxim in it. But we have the principle generally stated, at least, as regards prohibitory Vidhis, that they are directed against wrong acts which the people are usually prone to do.

The above are some of the maxims placed by Mr. Broom under the heads of public policy and Legislative policy. Then he gives certain maxims under the head of maxims relating to the Crown. I should only mention two.

(i) *Rex non potest peccare*.—The king can do no wrong.

Maxims relating to the Crown.

The Hindu Law does not recognise such a maxim. According to Hindu Law, a king can do wrong but he should not do it, as by doing it, he involves not only himself but his predecessors also in a sin, the punishment of which is everlasting hell, and besides, involves the whole of his kingdom in ruin.

(ii) *Quando Jus Domini Regis et Subditi concurrunt Jus Regis praeferri debet*.—Where the title of the king and the title of a subject concur, the king's title shall be preferred.

There is no maxim to this effect in the Hindu Law. But there is one and a very important one too, which negatives the title of the sovereign to the lands comprised within his dominion, which are in the occupation of his subjects. This maxim is laid down in the Viswajit Adhikarana, and it has been dwelt in an earlier lecture. It denies the right of property of the

Crown to lands in the occupation of the subjects, pointing out that all that the king has to do with regard to such lands is, to maintain order and to afford protection to those in occupation of them.

The following are some of the maxims of a logical character.

Logical
maxims.

(i) *Cessante Ratione Legis cessat ipsa Lex.* Reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself.

Under the Hindu Law, this maxim may be allowed to operate with regard to that class of law called Niyamavidhis, in which out of a number of things which will serve the same purpose, one is selected by law for the carrying out of the purpose, for some special reason. And when the special reason fails, any of the other things of the class may be allowed to be substituted for the especially prescribed thing. But, as regards absolute Vidhis, the Hindu Law is inflexible. This is made clear by the Hetubadnigada-adhikarana which has been referred to more than once. By this Adhikarana the statement of the reason is to be taken merely as a recital, and it is of no consequence to the law whether the reason continues or not. The law remains good inspite of the failure of any stated reason for it.

It has also been stated before that where a rule of law is grounded upon a reason consisting of a corrupt or selfish motive, that rule is not to be taken as a law at all by the principle laid down in the third Adhikarana - Drishtamulaka smritiaprmanyadhikarana of Chapter iii, Bk. I.

(ii) *Allegans contraria non est audiendus.*—He is

not to be heard who alleges things contradictory to each other.

The principle of this maxim is identical with the maxim of the two monsters.

(iii) *Omne majus continet in se minus.*—The greater contains the less.

This is identical with the maxim which has been mentioned before —‘In hundred is fifty.’

(iv) *Quod ab initio non valet in Tractu Tempories non convalescit.*—That which was originally void, does not by lapse of time become valid.

The following text of Yajnyavalkya indirectly proceeds upon this principle :

“If a person whose title is impugned should die, his heir should establish it ; in such a case enjoyment without title is no proof.”¹

Yajnyavalkya’s text also indicates an exception to this principle. For, this principle must be read subject to the principle of limitation which is as follows :

“To him who sees another enjoy his land for twenty, or his money for ten years, loss of that thing occurs.”²

The following passage from Broom will explain the application of this principle :

“In the ordinary case, also, of a will void by reason

1 याज्ञिक्यः परेतः स्यात्तस्य रिक्त्यो तमुद्धरेत् ।

न तत्र कारणं भुक्तिरागमेन विनाशिता ॥

Institutes of Yajnyavalkya. Vyavahara chapter, S. 21.

2 पश्यतोऽनुवर्तो हानिर्भूमेर्विशतिवार्षिकी ।

परेषु भुज्यमानाया धनस्य दशवार्षिकी ॥

Do., S. 24.

of its not being duly attested according to the provisions of the statute, or on account of the coverture of the testatrix at the time of making the will, all the dispositions and limitations of property contained therein are also necessarily void, nor can the original defect in the instrument be cured by lapse of time.”¹

(v) *Argumentum ab inconvenienti plurimum valet in Lege*—An argument drawn from inconvenience is forcible in law.

This principle is identical with the Swaru maxim,² which lays down that when one construction would secure a convenience and economy, and another would impose labour and fruitless trouble, the former is the proper construction.

Mr. Broom then proceeds to state what he calls fundamental legal principles and under this head at the outset states the following :

Fundamental
legal
principles.

(i) *Ubi Jus ibi Remedium*.—There is no wrong without a remedy.

Under the Hindu Law the rules contained in the Vyavahara portion of the Smritis are, by the very definition of Vyavahara, rules to remedy a wrong done by one man to another.

Yajnyavalkya - “If one aggrieved by others in a way contrary to the Smritis and the established usage complain to the king, that subject is one of the titles of Vyavahara, or a judicial

¹ Broom's Legal Maxims, p. 134. (2nd edition.)

² सरोद्धेदनाद्यप्रयोजकताऽधिकारश्च ।

Jaimini IV. ii. 1—6.

proceeding.”¹ Thus in respect of every wrong which can be made the subject of litigation as above, there is a remedy prescribed which the king has to enforce.

Then as regards the rules of the Achara Kanda, such of them as are cognisable by the ecclesiastical Courts *viz.*, the assemblies of priests, the remedy lies in expiation or penance.

(ii) *In Jure non remota Causa sed proxima spectatur.*—In law the immediate and not the remote cause of any event is regarded.

This principle is, to a certain degree, indicated by those Sutras of Jaimini by which a thing should be taken in its visible and tangible aspect, rather than in any transcendental aspect.

(iii) *Lex non cogit ad Impossible.*—The law does not seek to compel a man to do that which he cannot possibly perform.

Under the Mimansa Shastra when a text apparently enjoins something which is impossible, such text is to be read only as figurative in the nature of an Arthavada. For example, the text which refers to the building of the altar on the earth, in the firmament and in the heavens.²

(iv) *Ignorantia Facti Excusat, —Ignorantia Juris non excusat.*—Ignorance of fact excuses—ignorance of the law does not excuse.

1 अथ तत्त्वम् । याज्ञवल्क्यः—स्मृत्याचारव्यपेक्षेन मार्गेणाधर्षितः परेः आवेदयति चद्राक्षं व्यवहारम् इति तत् । आधर्षितसिद्धयर्थः ।
Yajnyavalkya, Vyavahara chapter, S. 5.

2 Taittiriya Samhita (V. 2. 7.)

According to the Hindu Shastras, even an ignorance of fact is not a complete excuse. The commission of a sin by reason of ignorance is to be visited with a smaller penalty, but it is not absolutely excused (see the 18th section of Raghunandana's *Prayaschittatattwa*).

(v) *Acta exteriora indicant interiora Secreta*.—Acts indicate the intention.

Jaimini, in effect, says the same thing in the Sutra, "Words relating to action bear on what passes in consciousness. From them external acts proceed."¹

(vi) *Nemo debet bis vexari pro una et eadem Causa*.—It is a rule of law, that a man shall not be twice vexed for one and the same cause.

Yajnyavalkya indicates the principle, when he says, "Nor should one already charged be allowed to be charged again."²

The Agni Purana puts this principle almost in the same form as in the above maxim in Chap. 253, where after describing the Courts it proceeds to speak of the procedure to be followed.

Then, as to maxims regarding the transfer of property, of the many valuable maxims of modern law on the subject, a few are only available for purposes of comparison :

Maxims
regarding
transfer of
property.

(i) *Alineatio Rei Præfertur Juri Accrescendi*.—Alienation is favoured by the law rather than accumulation.

1 भावाच्चाः कर्मशब्दाः तेभ्यः क्रियाप्रतीयेत ॥

Jaimini II. i. 1.

2 अभियुक्तं च नास्तेन नोक्ताम् विप्रकृतिं नयेत् ॥

Yajnyavalkya, Vyavahara Adhyaya, S. 9.

As regards the Hindu Law, the maxim on the subject may be said to be in the other way. It is accumulation which is favoured by the Hindu Law rather than alienation.

So far as the admonitory precepts go, both the Mitakshara and the Dayabhaga concur on this point of favouring accumulation rather than alienation. The difference between the two schools is, as has been already pointed out, that in certain respects what the Dayabhaga regards as merely rules of conscience, the Mitakshara regards as positive prohibitions of law against alienation.

(ii) *Accessorium Non Ducit Sed Sequitur Suum Principale*.—The incident shall pass by the grant of the principal, but not the principal by the grant of the incident.

In the Mimansa Shastra this principle is effectively declared in more than one form. It may be enough here to refer to Jaimini's Sutra :

"When a subordinate matter clashes with the principal, the latter is to prevail."¹

As regards the maxims regarding the law of descent, the principles of the Hindu Law and those of Europe are well known to be at variance with each other. Take for instance the following maxims :

(i) *Nemo est Heres Viventis*.—No one can be heir during the life of his ancestor.

Maxims
regarding
the law of
descent.

You have only to recall to mind the Mitakshara law of succession to see how a maxim like the above is inapplicable to the Hindu Law.

1. Jaimini III. iii. 9.

Then, again, take the following maxim :

(ii) *Hereditas Nunquam Ascendit*.—The right of inheritance never lineally ascends.

It is hardly necessary to point out that the above principle is contrary to the Hindu Law.

Then I may mention here one or two maxims regarding the Law of Contract mentioned by Mr. Broom :

Maxims
relating to
law of con-
tract.

(i) *Qui per Alium Facit per Seipsum Facere Videtur*.—He who does an act through the medium of another party is in law considered as doing it himself.

The Hindu maxim puts it more shortly—causing to be done is to do.¹

(ii) *Vigilantibus, Non Dormientibus, Jura Subveniunt*.—The laws assist those who are vigilant, not those who sleeps over their rights.

This is the foundation of the law of limitation. Yajnyavalkya lays down this principle, in effect, in the following verse :

“To him who sees another enjoy his land for twenty or his money for ten years, loss [of that thing] occurs.”²

I now proceed to place before you some of Mr. Broom's maxims relating to interpretation and compare them with the corresponding maxims of the Mimansa Shastra :

1 यः कारयति सः करोत्येव ।

2 पश्यतोऽनुवर्तो ज्ञानिर्भूमेर्विद्यतिवार्षिकी ।

परेश भूव्यमाणाया धनस्य दशवार्षिकी ॥

Yajnyavalkya, Vyavahara Adhyaya, S. 24.

(i) *Ex antecedentibus et consequentibus fit optima Interpretation.*—

Maxims
relating to
interpreta-
tion.

A passage will be best interpreted by reference to that which precedes and follows it.

This corresponds to the Mimansa Ekavakyata maxim. But the Mimansa maxim, however, is guarded against, by greater limitations than the Roman maxims. For, the latter is only subject to the following limitation.

'*A verbis Legis non Est recedendum.*'—No interpretation is to be made contrary to the express letter of the statute.

According to the Mimansa Shastra, however, it should also be read as subject to the principle of Linga-shabda-samartha (the vocabular principle) which deals with the latent force of words.

When you can clear up the ambiguity of the meaning of words of a sentence by examining the meaning of words, the Mimansakas would prefer this to that of reading the sentence with what precedes and follows. I believe there is good reason for the Mimansaka's preference of Linga to Vakya.

(ii) *Sensus Verborum Eex causa dicendi accipiendus est.*—The sense of the words ought to be taken from the cause or occasion of speaking them.

This broadly corresponds to the Linga principle.

(iii) *Absoluta Sententiâ Non Indiget.*—A positive statement is not in need of any interpreter.

This corresponds to the Sruti principle.

(iv) *Expressio unius est Exclusio alterius.*—The express mention of one thing implies the inclusion of another.

Those who support the rule of Parisankhya discussed in a preceding lecture rely on this principle.

(v) *Verba relata Hoc maxime operanturs per Referentiam ut in eis inesse videntur.*—Words to which reference is made in an instrument have the same effect and operation, as if, they were inserted in the clause referring to them.

This principle embodies bodily the principle of Atidesha which has been discussed in full.

(vi) *Conditio Præcedens adimpori debet prinsquam sequator effectus.*—A condition precedent must be fulfilled before the effect can follow. This corresponds with the following Mimansa principle :

“All the Angas (conditions) of a sacrifice must be performed before a sacrificer can reap the fruits of the sacrifice.”¹

(vii) *Mellius Est Petere fontes quam Sectari rivulos.*—It is better to seek the fountains than to follow the rivulets.

This corresponds to the following maxim :

“When an object can be attained by following a straight path, what is the good of following a circuitous course?”²

(viii) *Sic Interpretandum Estut Verba Accipiuntur Cum effectu.*—Such an interpretation is to be made that the words may be received with effect.

You have already seen that this is one of the axioms

1 प्रत्यक्षादगुणसंयोगाक्रियाभिधानं स्यात्तदभावेऽपि सदस्मात् ॥

Jaimini VII. iii. 4.

2 सृजुमार्गेण सिद्धतोऽर्थस्य वस्तुन साधनायोग इति शब्दः ।

of Mimansa interpretation put in the form of a short adage.

“More words, more meaning.”¹

(ix) *Optimus Interpres Rerum Usus*. - Usage is the best interpreter of things.

This principle is regarded as exceedingly important both by European lawyers and by the Hindu Shastra writers. Jaimini puts it among those rules of interpretation which he inculcates with special reference to the Smṛiti and usage law, and it is embodied under the Adhikarana called the Padārtha-prabalyadhikarana. Jaimini puts it distinctly by the Sūtra,

“Without speculations as to causes, usages prevail.”²

Section II.—Resemblance and difference between the general lines of interpretation followed by English authors and the Hindu authors.

The Hindu authors follow a system of interpretation which may claim to be scientific. They impliedly observe certain elemental rules as matters of axiom, just as, we have axioms in Euclid's Geometry. I have explained to you these axioms. Then they inculcate certain general principles of construction relating to the properties of words and sentences; just as, Euclid treats of the properties of lines and figures. When by the general properties of words and sentences the meaning

1 शब्दाधिक्यात् अर्थाधिक्यम् ॥

2 अपि वा कारणानुसारेण प्रयुक्तानि प्रतीयेरन्

Jaimini I. iii. 7.

of a particular word or a particular sentence is self-evident, this is called Sruti. When the meaning is doubtful, then by examining the properties of words in the particular case the meaning is to be cleared up, this is called Linga. Again, when the doubt has to be removed by examining the properties of particular sentences, it is called Vakya. Again, when a proposition is to be understood with reference to the necessary connections between the different parts of the topic, it is called Prakarana.

Over and above a discussion of these general principles of Sruti, Linga, Vakya and Prakarana, the Hindu authors formulate particular propositions which fall under one or other of these heads, with reference to concrete cases. These are called Nyayas or maxims. Such a treatment may be called scientific. But the Hindu writers, it must be confessed, are rather theoretical, while the English writers give such concrete cases, though unsystematically, as render practical help.

Mimansa
rules of
construction
substantially
agree with
the modern
English
principles
of construc-
tion.

Notwithstanding the difference of methods, generally speaking, the Mimansa rules substantially agree with the rules of construction in English books. I have tried to show, almost at every step, in course of treating the subjects of Sruti, Linga, Vakya and Prakarana, how these agree with what Maxwell lays down in his book.

It is indeed interesting to follow the agreement between the views of modern writers on interpretation and those of the ancient Sanskrit writers of India. Compare the very opening passages of Maxwell given below with that of Savara Swami in the very first page of his Bhasya.

“The object of all interpretation of it is to deter-

mine what intention is conveyed, either expressly or by implication, by the language used, so far as it is necessary for determining whether the particular case or state of facts presented to the interpreter falls within it. When the intention is expressed, the task is one of verbal construction only; but when the statute expresses no intention on a question to which it gives rise, and yet some intention must necessarily be imputed to the Legislature regarding it, the interpreter has to determine it by inference grounded on certain legal principles."¹

Now on going through the opening passage of the commentary of Savara you will find that, Savara Bhasya, in effect, says the same thing, though in a discursive and argumentative fashion. He says that a mere reading of the Vedas is not sufficient. After one has read the Vedas, he must try to realise the intention of it. And then the Swami raises the question that if the intention is once realised as being that of teaching Dharma, what is the need of further efforts to interpret the Vedas? To this he answers that, whether a given act agrees with the intention of the Veda or not, requires explanation.

He says :—

"Even if the Veda has been proved to be the only means of knowing duty,—with regard to the ascertainment of the meaning of Vedic passages, there is no agreement among learned people (lit. 'people knowing many things'), on account of various (kinds of) doubts. Some say "this is the meaning";—some, "not that, but this,"—and it is also for the settlement

1. Maxwell p. 1. (Third edition.)

of these (differences of opinion with regard to the meaning of Vedic passages) that the treatise, subsequent to this (1st pada), has been composed.¹

Similarly, you have seen that, according to Maxwell, the primary object of interpretation is to ascertain the intention. But where an expression of the intention is required to be known but is not found, there it has to be presumed according to certain principles.

Some other
Mimamsa
maxims.

Now I shall proceed to compare some of the Mimamsa Nyayas (Maxims) with certain head notes of Maxwell and certain decided English cases.

The Garhapatya Maxim and the Barhi Maxim correspond to the golden rule laid down by Lord Wensleydale which is as follows :—

“The grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity, repugnance or inconsistency, but no further.”

The Sphadi Maxim and the Aruni Maxim correspond to—what Maxwell puts under the head :—*words understood according to the subject matter.*

Maxwell introduces his section on the subject as follows : -

“The words of a statute are to be understood in

१ धर्मो प्रतिनिधि विधिपत्रा वदति :—केन्द्रियं धर्ममाहुः, कश्चिदन्वयः ।
सोऽयमविचार्य प्रवृत्तमानः कश्चिद्वैयोपाददानी विद्वन्वेति, अनर्थं च कृच्छेत्,
तन्नाह्वयौ जिज्ञासितव्यौ इति, स हि निःशेषेन पुढवं संयुक्तौति प्रतिजानीमहे ।

SavaraBhasya, p. 2. (Jibananda Vidyasagara's edition.)

the sense in which they best harmonise with the subject of the enactment and the object which the Legislature has in view. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used and the object to be attained."¹

Compare the above with the above mentioned *Sphadi* Maxim and *Aruni* Maxim. The former Maxim is introduced by the Sutra :

"A thing which is connected with the performance of an act of duty as means to an end, must be understood in a sense which is suited to the purpose of that act."

The latter Maxim is introduced by the Sutra :

"The purpose being one and the same viz., to promote an action, materials and qualities (thereof) are laid down simply to subserve that action, and not to control it."³

The Three Debt Maxim answers Maxwell's topic:—
Extension of meaning according to the object.

With regard to the above subject, Maxwell remarks as follows :—

"Even where the usual meaning of the language falls short of the whole object of the Legislature, a more extended meaning may be attributed to it, if fairly susceptible of it. If there are circumstances in the Act showing that words are used in a larger

1. Maxwell p. 74. (Third edition.)

2. Jaimini III. i. 10.

3. Jaimini III. i. 11.

sense than their ordinary meaning, that sense must be given to them."¹

Compare this with the manner in which the Three Debt Maxim is arrived at.

The Chitra Maxim and the Tad Vyāpadesha Maxim practically run on the same lines as the following topic in Maxwell :—Modification of the language to meet the intention.

The remarks of Maxwell under the above head are as follows :—

"Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship, or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence."²

Compare this with the way in which *Chitrā* Maxim and the *Tad Vyāpadesha* Maxim are settled.

The Khamesti Maxim and the Swaru Maxim as well as the Tantrata and Prosanga principles amount to presumptions against intending what is inconvenient or unreasonable.

Under the above head Maxwell observes as follows :—

"In determining either what was the general object of the Legislature, or the meaning of its language in any particular passage, it is obvious

1. Maxwell p. 95. (Third edition.)

2. Maxwell p. 319. Do.

that the intention which appears to be most agreeable to convenience, reason, justice, and legal principles, should, in all cases open to doubt, be presumed to be the true one. An argument drawn from an inconvenience, it has been said, is forcible in law ; and no less force is due to any drawn from an absurdity or injustice."¹

Compare the above with the *Khâmeshti* Maxim, the *Svaru* Maxim as well as the *Tantra* and *Prasanga* Maxims.

The Rurhi-Yoga Maxim and the Padārtha-prabalya Maxim correspond to the remarks of Maxwell under the head :—*Words construed in popular sense*² and his remarks under the head :—*Effect of Usage*.³

The Kalanja Maxim and the Paryudasa Maxim cover Maxwell's observations under the head of '*Repugnancy*.'⁴

The Maxim of Arthavada includes the subject of Recital etc.

An Arthavâda roughly corresponds to a recital or preamble, as already explained. Jaimini speaks of it as being the Stuti (that which expresses the merit) of a Vidhi. Later writers describe it as showing the Prashastya (scope) of a Vidhi. The object of a preamble or recital is roughly the same. According to the English Law mere recital in a statute, either of fact or law, is not conclusive.

¹ Maxwell p. 264. (Third edition.)

² Maxwell p. 77. Do.

³ Maxwell p. 423. Do.

⁴ Maxwell p. 214. Do.

Compare *Reg. v. Haughton* (1. E. & B. 501; *Bentley v. Rotherham* (4 Ch. D. 588, 46 L. J. Ch. 284); *Crowder v. Stewart* (16 Ch. D. 368); with the *Mimansa* principles known as *Vidhibannigada Maxim* and *Hetubannigada Maxim*.

The principle laid down in the case of *Reg. v. Bishop of Oxford*¹ has been followed in many cases in this country. It is this :

“ A statute ought to be so interpreted that, if it can be prevented, no clause, sentence or word shall be superfluous, void or insignificant.”

It has already been shown that this principle is expressed by Hindu writers by the short maxim—More words, more meaning.²

It is hardly necessary to carry on the parallelism further. What I have put to you will show sufficiently that although in some respects the method of treatment differs in the two systems, they substantially agree with each other.

Before concluding this lecture I shall only shortly discuss the import of two pairs of antithetical phrases :—*Illegality and irregularity* and *patent and latent ambiguity* so well known to modern lawyers.

Illegality
and irregu-
larity.

Illegality and irregularity—We all know the distinction between the two. Illegality implies an act in violation of some rule the consequence of which violation is to make the act null and void, while irregularity implies an act in violation of a rule the consequence of which violation does not make the act null and void.

1. (C. L. R. 4 Q. B. D. 261).

2 शब्दाधिक्यात् अर्थाधिक्यम् ।

In the one case the rule violated is imperative; in the other it is simply regulatory. You have seen that the Mimansakas and Hindu lawyers make the same distinction. In fact, the distinction is one which no system of law can possibly avoid. But the distinction is often too nice and difficult to make. As regards the Vedic rites, the Mimansakas enforce the distinction in this way. Certain matters connected with the rite they call Angas (essential parts). The Angas must be performed or else the Yajna will be void. But there are certain other matters which are merely matters of Niyama, and the violation of them does not make the Yajna completely void, but merely a little defective. 'Perform the Agnihotra with curdled milk' is a rule by which the use of the curdled milk is made an Anga (essential part). It can not be dispensed with. But the direction 'beat the wheat to unhusk it' is a Niyama. If one unhusks the wheat not by beating, it will only make the Apurva (spiritual benefit) a little less, but not render the Yajna void. Again, coming to the time of the digest writers you have seen how Vijnaneshwara establishes that, if the precept that a Brahman should not make wealth by receiving a return for religious works, may not have been observed, yet that will not avoid the Brahmana's right to the wealth acquired by breach of the precept. Jimutavahana also makes out that the direction to a man not to dispose of even his self-acquired property is a mere precept not to put his relatives to distress, and that an alienation of the property violating the precept does not make the alienation void. This is called the doctrine of *factum valet*. But it is really a case of irregularity as contradistinguished from illegality.

Thus you see how the old Hindu authors made the distinction which the modern lawyers also are bound to observe in parallel cases.

Patent and
latent ambi-
guity.

The topic of *patent ambiguity and latent ambiguity*. When a passage is either self-contradictory or uncertain of meaning on the face of it, it is a case of patent ambiguity. But when a passage would only be unmeaning, if it be applied to a certain thing, but not, if applied to another, both more or less indicated, then it is a case of latent ambiguity. The terms are usually used with reference to private documents. But passages in statutes may also happen to be in either of the two categories. In the case of patent ambiguity the passages are to be discarded, and in the other case, extrinsic evidence or circumstances are to be resorted to, to ascertain to which of two or more things the passage was intended to apply. This is the law according to modern jurisprudence. But how did the old Hindu authors treat the matter? They do not speak of patent and latent ambiguity in so many words. But they do notice and provide for the principle underlying the topic in the case of patent conflicts and latent conflicts. A patent conflict is a case of *Pratishedha* (simultaneous injunction and prohibition) resulting in option, as in the case of the texts "Use the Shodasi vessel in the dead of night" and "Do not use the Shodasi vessel in the dead of night."

A latent conflict is what Jaimini says to be an apparent conflict with reference to the objects of application. Jimutavahana gives many instances of it, some of which I have already put to you. But leaving patent conflicts and latent conflicts apart, the question of patent ambiguity and latent ambiguity has been also

very fully treated by the Mimansakas, though not in the way that modern lawyers handle the subject. The Mimansakas deal with the subject in connection with their topic of avoiding Anarthakya (meaninglessness). Regarding patent ambiguity, perhaps there is this peculiarity in the writings of the Hindu lawyers of old. The latter would not easily take a word or sentence to be self-contradictory or absolutely uncertain of meaning. Sometimes they virtually take the liberty of even correcting the language by means of the Linga, Vakya or the Prakarana principle. They give a meaning to such apparently incoherent expressions as "the vegetables performed sacrifice for a session." By what is called the Kaimutika Nyaya (What and again Maxim), they explain the expression to mean that man should certainly perform sacrifices as even the vegetables did once on a time. Then again, the sentence "there should be no alter of brick in the firmament or in the heavens" is not allowed to be considered as absurd. However, these are met in the Vedas ; and thus, they must be any how understood in some sense. But, even as regards less sacred writings, the Smritis, one does not easily meet with a case in which the digest writers discarded a text as being absolutely uncertain of meaning or self-contradictory. Even in these days an interpreter of a statute would not lack the respect due to the legislative authorities, and in deference to such authorities would not call a spade a spade if they found a provision of law ridiculously uncertain of meaning. In fact, the Mimansa writers and modern text writers on interpretation have to pass through similar trials.

LECTURE XII.

A SUMMARY OF HINDU JURISPRUDENCE AND OF MIMANSA PHILOSOPHY AND LITERATURE.

Part I. Hindu Jurisprudence.

Part II—(a) Mimansa Philosophy.

(b) Mimansa Literature.

Part I—Hindu Jurisprudence.

This subject has been succinctly touched in the Introductory Lecture. Here I shall present to you the essential points of the ancient Hindu conception of law methodically put in a small compass. Law, according to the Hindu Jurisprudence, is of a three-fold character.

(1) Manushya Dharma or the spiritual and moral Law.

Three-fold
character of
Hindu Law.

(2) Kratu Dharma or the ecclesiastical or sacrificial Law.

(3) Vyavahara Dharma or the Civil Law.

Each of these three kinds of law has a sanction appropriate to it. The sanction consists either of some benefit and reward or of some form of coercion and punishment.

The Law has
sanction.

In the Manushya Dharma (spiritual and moral law) the sanction is simply spiritual and moral benefit and reward. In the Kratu Dharma there is the spiritual and moral sanction and, in addition, the coercion by ecclesiastical bodies and tribunals. In the Vyavahara Dharma there are the above two kinds of sanction at least in criminal matters, and in addition, the coercion by the King's Courts and popular tribunals. Thus the

sanction of the Kratu Dharma is two-fold, and that of the Vyavahara Dharma three-fold, at least in some cases.

The nature of
ancient and
modern
sanction.

Coercion is the only thing recognized in our modern Jurisprudence as sanction. The other kind of sanction of a Vidhi or law is the securing of benefit in the shape of a reward from some authority above ; in other words, benefit other than what arises merely from the action of the man himself according to his desires and feelings, and is therefore called *aprapta* (not otherwise obtained). Thus there is an element of penalty in every case. As regards Manushya Dharma the penalty is loss of heavenly bliss and incurring the sufferings of hell. In the case of the Kratu Dharma, there is the above penalty and, in addition, the penalty of penance and expiation. In the Vyavahara Dharma, in addition to the above, there is the penalty of punishment by the king.

Thus the sanction of a Vidhi, according to the Hindu Jurisprudence, consists both of hope and fear. But the definition of a Vidhi is usually with reference to the hope. Accordingly, the definition is *aprapta prapli*, that which secures what is not spontaneously obtained. Thus what is spontaneously obtained by natural instinct is not a matter of Vidhi : 'Eat when hungry' is not a Vidhi ; 'Sleep when tired' is not a Vidhi. Because, these injunctions are *prapla prapaka*, containing a spontaneous benefit. But, 'Do not hurt any one' is a Vidhi ; 'Buy and sacrifice' is a Vidhi. Because, in either of these cases, a reward is believed to be assured by higher agencies.

As regards mere statements or recitals, these are not Vidhis as already explained.

Thus I have explained to you affirmatively what a Vidhi is and, negatively, what it is not.

As regards the spiritual and moral Vidhis, see Ganga Bhatta's Padas and Vidhi Rahasya by Appya Dikshita.

As regards the ecclesiastical laws or Kratwartha Vidhis, they were enforced in Vedic times by the priests assembled at the great sacrificial ceremonies.

In later times, the village ecclesiastical authorities extended their functions, and formed a sort of ecclesiastical court to take cognisance of, and punish, in their own way, all offences and sins which were provided against in the Smritis. These offences were of two kinds—those that were more heinous and were called Mahapataka and, those which were of the nature of ordinary misdemeanours. The penances and expiations for the former class were of course severer than for the latter class. A person guilty of a Mahapataka was additionally liable to be punished by the king or his court. But the power of the ecclesiastical authorities, apart from the power of the King's court, was not to be trifled with. For, if a person guilty of a Mahapataka did not surrender himself to the ecclesiastical authorities and submit to the proper penance and expiation, he could not fare on with impunity. The village community, as a whole, would not allow such an offender to go scot-free. They had it in their power effectually to outcaste the man and make his existence a burden. They had the village barber, the village washerman, the village decorator and also the village Patwari at their command. These village functionaries were bound to refuse service to any offender who had committed a heinous sin or crime.

Ecclesiastical courts.
Their functions.

King's courts
and Vyava-
hara law.

This is all I need tell you regarding the ecclesiastical jurisdiction. Now as regards the jurisdiction of the King's courts and the Vyavahara Law. The Vyavahara branch of Hindu Jurisprudence is, no doubt, more or less based upon the spiritual Jurisprudence. But there are important modifications introduced to suit the requirements of the Vyavahara Kanda.

Meaning of
Vyavahara.

The word Vyavahara is usually used in contradiction to *tattvajñāna*, which means spiritual consciousness. Vyavahara means wordly conduct. So the Vyavahara law is law either based on or relating to worldly practice. It appears that the Vyavahara relates essentially to the practice observed by the people, and it is to give effect to this, that the kingly power came into existence. This is evident from the following text of Narada :

"Performance of duty having fallen into disuse, positive law has been introduced, the King as superintending the law is invested with power to punish."¹

In fact, the Vyāvahāra Dharma (legal duties) are connected with Rāj Dharma (the duties of the king).

Divine right
of the King
has no
place in
Hindu
Shastra.

In the Hindu Shâstra, the theory of the exclusive Divine rights of the king has no place. According to the Hindu Shâstra, the king has more of Divine liabilities than Divine rights. The Smritis impose on the king manifold duties and give him rights only to enable him to perform them. Among the duties of the sovereign imposed by the Divine Law is, the duty of administering justice between subject and subject, and he is invested with the power of punishment to

1. नष्टे धर्मो मनुष्याणां व्यवहार प्रवर्तते ।

इह स व्यवहारायाम् राजा दण्डधरः अतः ॥ Narada.

do this duty effectively. See Manu, Ch. VIII. Ss. 1—20. See also Yājñavalkya, Vyavahara Adhyayas, Ss. 1-4 and Achara Adhyayas, Ss. 355—359.

The following texts of Manu and Yajnavalkya, intended as guides for the king, show that the Vyavâhâra law and its sanction are both the outcome of Raj Dharma (the duties of the king). And it will not be wrong to say that the Vyavahara law binds the king as well as the subjects.

“2. Those should be made assessors by the king who had studied the Vedas and Shâstras, who know the law, who speak the truth, and who look to friends and foes with the same feelings”.

“3. A king who, from press of work, cannot attend to administer justice, should appoint [in his own place] a Brahmana learned in all laws, to work along with the assessors”.

Vyavahara is defined by Yājñavalkya as follows :

Vyavahara
defined.

“If one, aggrieved by others in a way contrary to the Smritis and usage, complain to the king, that is a matter of Vyavahara (civil law).”¹

In other words, it is the civil law as opposed to the ecclesiastical or spiritual law.

The definitions and classifications of laws forming this branch of the Hindu Law may be called Jurisprudence of the Vyavahara Law. Now, you have to see how far this jurisprudence is identical with that of the spiritual and ecclesiastical branches of the Hindu Law.

Hindu juris-
prudence.
Its identity
with
spiritual law.

1. अद्वैतानुसारेण मार्गदर्शितः परः ।

आवेदयति चेद्वाच्यं व्यवहारपदं हि तत् ॥

Yājñavalkya, Vyâvahâradhyâya, S. 5.

The point of difference between the spiritual and civil law.

Classification of Vidhi into Vidhi proper, Niyama and Parisankhya.

In the spiritual or the ecclesiastical law, the sanction is the hope of obtaining what is absolutely unattainable by other means and the fear of losing it. In the Vyavahara law, the sanction is the hope of obtaining what the society through its representative, the king, can and does secure to a man, and also the fear of incurring punishment at the hand of that representative of the society. This is the great point of difference between the two laws. But, in either case, there is something to be gained or lost under some sort of compulsion, actual or constructive. For instance, Manu says, the flesh of such and such animals is not fit to be eaten. This cannot be a Vidhi, being a statement like that of satisfying hunger or appeasing thirst. What is it then? It is an authoritative recommendation. In short, it is simply a monitory precept. But there are many such texts in the Smritis. Therefore to whittle away their importance was not welcome to the sacerdotal class. Accordingly, there was an effort on the part of recent Smriti writers to make out that a Parisankhya was an implied prohibition. This view, however, has not been countenanced by the leading Mimamsakas.

Jimutavahana does not expressly mention Parisankhya in his discussion on the interpretation of the text regarding partition by the sons after the death of their parents. But he alludes to it as Sreekrishna Tarkalankara points out. In fact, Jimutavahana begins his arguments by showing that the text can not be taken (by way of Parisankhya) as implying a prohibition of partition during the life-time of the parents by the express mention of partition at their death. For he says, to take it as making such an implication would

be open to the objection of giving the go-bye to what is expressly mentioned. This is one of the three objections which the leading Mimansakas urge against the view of accepting Parisankhya as an implied prohibition.

Medhâtithi explains the difference between a Vidhi and Niyama and between a Niyama and Parisankhya in his comments on verse 45, chapter III, Manu.

Vidhi is an expression which declares a duty, as for instance, the expression 'offer fire sacrifice for heavenly bliss,' the duty of offering fire sacrifice not being derivable from any other than the text mentioned."¹

'Niyama takes place when an expression connected with a duty regarding a spiritual (unseen) matter is applied to something involved in that matter, as for instance, regarding the Darsha Purnamashi Yajna, there is the direction to perform it on an even ground, implying a suggestion of not choosing an uneven ground, which, if chosen, would contravene the collateral direction."²

It should be observed, however, that the contravention of the direction will not invalidate the Yajna itself,

यः शब्दः कर्तव्यतावाचकः अग्निहोत्रं कुर्यात् स्वर्गकाम इति । न ह्यग्निहोत्रस्य-
तद्वचनमन्तरेण न्यतः कृतमित् कर्तव्यतागमः ।

Medhatithi's Commentary on verse 45,
Chap. III. Manu.

2. नियमः पुनर्यथाहृष्टसिद्धार्थस्य वचनमन्तरेण पाक्षिकी प्राप्तिः । यथा सने
यजतेति दर्शपौर्णमासादि यागविधानाद्देशमात्रमाचितम् ।

Medhatithi's Commentary on verse 45,
Chap. III. Manu.

but will only reduce a little the Apurva (transcendental benefit).

As regards Parisankhya, Medhatithi explains that the expression 'Five of the class of five-nailed animals may be eaten', also suggests the eatability of the others of that class. And, as regards this eatability, the natural inclination of eating (which vary) will not (uniformly) recognise the fitness of some to be preferred to others. Hence, this text is meant to suggest rather the unfitness of all but the five mentioned for food, than the fitness of those mentioned."¹

He then states the threefold objection to which this view is open. Yet in the conclusion he says that in the particular case which he was considering, Parisankhya as suggesting the undesirability or ineligibility of the non-mentioned, compared with the mentioned, was applicable.

Raghunandana, similarly, explains these three terms in his Prayaschitta Tattwa.

'The direction about eating in the Chandrayana Vrata cannot be a Vidhi, because a direction to do what every man is eager to do by natural impulse is not a Vidhi.'²

1. अथ पञ्च पञ्चनखा भक्ष्या इति सूत्रप्रतिपादितेनार्थेन ब्रह्मकादिविषयि भक्ष्यता प्रसक्ता तद्व्यतिरिक्तेष्वपि वानरादिषु । न च तत्र पर्यायेष्वेव प्रकृतिः । युगपत् तत्र चान्यत्र च प्रसक्ती पञ्च पञ्चनखा भक्ष्या इति वचनमितर परिसंख्यानार्थं परिसम्पद्यते ।

Medhatithi's Commentary on verse 45.
Chap. III. Manu.

2. चान्द्रायणादौ भोजनस्य रात्रिप्रातःत्वात् नाप्रातःप्रातःको विधिः ।

Raghunandan's Prayaschittatattwa p. 485.
J. N. Vidyasagara's edition.

"A Vidhi is like the command 'perform the Sandhya prayer at all times?'"

"The direction about eating in the Chandrayana Vrata is also not a Niyama Vidhi, as it can have effect only in the contingency of one not using his own discretion to refrain from eating from a sense of its not being needed."

"It might be a Niyama Vidhi if the direction was 'Eat at such and such day of the moon in such and such month.'"

'A Niyama takes place when, although a matter is optional, it should be done in a certain case.'

In short when it is said a man should satisfy his hunger or appease his thirst, this is no law, because no law is required for such purposes. There is nothing in the statement showing any want, which could be called Aprapta (not apt to be spontaneously fulfilled). The whole is Prapta, apt to be spontaneously fulfilled. But when it is said, a man should not marry within certain degrees of relationship, this is law, but law of a civil or worldly nature. For the rule is required to ensure what otherwise would be Aprapta (not apt to be spontaneously fulfilled).

Both spiritual Vidhis and Vyavaharic Vidhis are equally liable to be classified into Vidhi proper, Niyama, and Parisankhya. But, as a spiritual Vidhi proper differs

Like
classification
of spiritual
Vidhi.

1. अहरह सन्ध्यामुपासीत इतिव' रूपम् ।

Raghunandan's Prayaschittatattwa p. 485.

2. नापि तद्वचनस्यानावश्यकत्वेन स्वायोग्यवच्छेदमावश्यको नियमविधिः ।

स च तत्तत्तिथौ तत्तद्व्यासान् मुञ्चोतिवेतिव' रूपः ।

Raghunandan's Prayaschittatattwa p. 485.

from a Vyavahara Vidhi proper, so there is a corresponding difference between a spiritual Niyama and a Niyama of the Vyavahara law ; similarly, between Parisankhyas of either. A spiritual (Vedic) Niyama is partly a matter of the absolutely unattainable by worldly means and partly of what is attainable by worldly means. While a Vyavaharic Niyama is partly of the character of a rule having the sanction of punishment by the society and partly of the character of a matter of discretion. You have had examples of Vedic Niyama. The following are examples of Vyavaharic Niyama.

Vyavaharic
Niyama
illustrated.

The prohibition of marriage within certain degrees of family relationship is a Vidhi, the non-observance whereof would vitiate a marriage. But the direction of Manu that the bride must be an amiable and healthy girl is a Niyama, the non-observance whereof would not vitiate a marriage. Vijñaneswara says that "in transgressing the prohibition against [espousing] sickly and the like brides, there is only a transgressing of a visible rule [framed with a popular object], the status of a lawful wife is superinduced notwithstanding [the existence of those defects.]"

Jimutavahana contends that the expression 'the sons may partition the property after the death of the father and mother' is not a Vidhi, because such partitioning is not Aprapta Prapaka, *i.e.*, by such partitioning they would get nothing which might not be got in the usual course of things by virtue of their proprietary right. He also demonstrates first, that it can not be a Niyama in the Vedic sense of the term ; and in the next place, he shows it cannot be a Niyama in the Vyâvahâric sense of the term, that is, as laying down a direction

as to the time of partition. He says that the text is an Anuvada, that is, a mere explanatory text.

A word again as to Parisankhya. It is a direction as regards a thing which is wholly a matter of discretion and not partly, but at the same time it is sometime authoritatively laid down. Therefore it is described as both *prapta* and *aprapta*. Parisankhya

Then Raghunandana discusses the character of Parisankhya just as Medhatithi does. He like Medhatithi says that, in general, it is wrong to act upon the principles of *expressio uniterius est exclusio alterius*, but in exceptional cases the principle may be adopted, as in the case which he was considering.¹ As enunciated by Raghunandan.

In fact, as in the case of the revealed law and the laws of the Acharakanda so in the Vyavahara jurisprudence, a Vidhi is an imperative command, a Niyama is more or less a directory or regulatory rule, and a Parisankhya is, in general, monitory or recommedatory rule, but in exceptional cases, implying a suggestion of prohibiting the correlative of what is recommended.

Both Jimutavahana and Vijnaneswara lay down another case where a rule is to be taken as directory or monitory in the Vyavahara law. This is where a Vidhi of the nature of a merely spiritual or moral character occurs in the body of the Vyavahara law but is inconsistent with some positive provisions of its own.

1. तस्मादगत्या "श्रुतार्थस्य परिव्यागादश्रुतार्थस्य कल्पनात् । प्राप्तस्य वधादित्यत्र परिसंख्या विदोषिका ॥"

"अन्यार्थश्रुत्यभावाच्चान्यार्थप्रतिषेधिका । परिसंख्या तु सा ज्ञेया यथा प्रोक्षित भोजनम् ॥

Raghunandan's Prayaschittatattwa p. 485.

Such a rule would undoubtedly be a Vidhi in the spiritual or ecclesiastical jurisprudence, but occurring in the body of the Vyavaharic law and contradicting any of its established rules must be taken merely as recommendatory or monitory.

Where, however, such a moral or spiritual rule does not contradict any established rule of the Vyavahara law, but, on the contrary, is in unison with it, there would be no question about it. In such a case, it would support and strengthen the particular Vyavahara rule corresponding to it. So much as regards the classification of Vidhis.

The principles which govern the subject of negative Vidhis, have already been discussed in full. The discussion need not be repeated here.

Arthavada.

The principles of Arthavada have also been fully discussed. It is sufficient to say here that they occupy the same position both in the Vedic law and the Vyavahara law. In the Vedic law they enter rather elaborately in various ramified forms, such as Gunavada, Anuvada and Bhutarthavada ; while in the Vyavahara law they are mostly in the character of Anuvada, that is gloss or explanation.

In conclusion it hardly need be stated that in the Smritis, matters, social, moral and legal, are all treated. But there is a sharp line of demarcation between the legal on the one hand and the social and moral on the other, that is, between *Vyavahara* and *Achara*, as the latter two may roughly be called.

Sir G. D. Banerjee in his *Tagore Law Lectures* thinks that the distinction cannot be maintained ; first, because " Though in some Smritis, as in

the institutes of Yajnavalkya, the Dharmashastra is divided into three sections relating respectively to *Achāra* or ritual, *Vyavahāra* or jurisprudence, and the *Prayaschittas* or expiation ; no such clear division is to be seen in the Code of Manu, the highest authority on the subject." Secondly, "because the law relating to marriage—an important branch of every system of Jurisprudence—is contained, not in the chapter on *Vyavahāra*, but in the part treating of *Achāra*. And thirdly because "Manu in more instances than one provides purely religious sanctions to enforce obedience to rules relating to civil life." It is, however, with due respect submitted that none of the reasons possesses great cogency. A formal division into *Achāra* and *Vyavahāra*, no doubt, does not expressly appear in Manu as in Yajnavalkya, but it is sufficiently indicated in Manu as in all other Smritis. Then, as regards the question of marriage, it is of an exceptional character. In all countries and all nations, it has more or less a double aspect—a civil and a religious or social aspect. In the civil aspect, it constitutes a branch of the law of *status* which has some connection with the religious practices of the people.

Then, again, as regards the question of the religious sanction, it has already been amply explained that the religious sanction from the Hindu point of view is something more than a mere moral sanction. It is believed to be something absolute and certain. Besides, the positive or *Vyavahāra* law is based upon both the sanctions—punishment by the King as well as the religious sanction of the transcendental consequences ; whereas

in matters of *Achara*, there is only the ecclesiastical sanction of penance or none at all.

Dr. T. N. Mitra observes in his Tagore Law Lectures delivered a year after those of Sir G. D. Banerjee, that, Vijnaneshwara clearly sets forth the distinction between the binding code and the rules of ethic. Vijnaneshwara points out this distinction with reference to the text of Yajnavalkya relating to the judicial duties of the King.

In point of fact, the principles of moral law are so intimately connected with the principles of judicial law, that there must be many questions on which it is hard to demarcate the boundary between the two. Examples of these with regard to the Hindu law may be more numerous, but they occur with regard to the laws of other nations also. In short, the judicial code is enlarged more and more by drawing upon the moral codes. What is called equitable laws and case-laws are nothing more than illustrations of these. Where a moral principle or a social principle is enunciated by person or persons in authority, whose words are accepted by persons entrusted with the administration, by some fiction or other, of justice, as the voice of the State in other countries, and as the voicing of the word God in this country, it becomes positive law. The point for interpretation of such matters is whether it has been so accepted.

PART II.

MIMANSA PHILOSOPHY AND MIMANSA LITERATURE.

I shall tell you now a few words and only a few words on these topics, as they are not essential to my subject, but come in merely in an incidental way.

I. MIMANSA PHILOSOPHY.

The philosophical factor of the Mimansa Shastra is short, though often an extensive field is made of it. The philosophy of the Mimansakas is really the philosophy of words. It is contained in Sutra 5 as if it were in a nut shell. That Sutra runs thus :

Mimansa
philosophy.

“Eternal is the concomitancy between the word (of command) and its purpose. The means of knowing this eternal concomitancy is the teaching (revelation) which is unfailing in leading to transcendental effects (eternal bliss) and is irrespective of anything else as Badarayana has it.”

There are two schools slightly differing from each other in interpreting the above Sutra. One is the conservative school of Savara Swami, Kumarila &c. The other is the rational school of Guru Prabhakar. The writings of the conservative school are rather too abstruse for us to follow them easily. But the analytical treatment of Guru Prabhakara as explained in Prakaran Punchikā by Kalinath Misra is easy and interesting. Prabhakara takes it that a word is the embodiment of the impress of a will power directed to a particular purpose. Therefore the word conveys the purpose as its necessary concomitant. In the case of the

The conserva-
tive and
rational school
of Mimansa
philosophy.

fluctuating will of man, the purpose or the meaning of words may vary. But in the case of the eternal will impressed upon the words of the Vedas, those words convey eternal truths, producing transcendental effects. This is the philosophy proper of the Mimansakas. But it is often extended to the Metaphysics of Karma which means that there is an unfailing sequence of deeds. However, it is enough for me here only to indicate the chief point of the Mimansa philosophy. Some say the Mimansa philosophy is athiestic. But a careful study of it will show that a belief in the existence of a supreme will power is the back ground of the disquisition of both the schools.

The discussion called Sphotavada, is upon the question whether it is the elementary sounds which are represented by single letters, that have an inherent power of conveying sense, or it is their combination into words which gives them such power. It is hardly necessary for us to follow this discussion.

It is impossible for man to conceive of a definite idea or thought without some form of expression being present in the mind to communicate it and to make it realistic. Hence with the first conception of the design of the Universe in the Supreme Mind, there must have been a form of expression of it to make it realistic. Thus the Christian Bible has it : "In the beginning was the Word, this Word was with God, this Word was God." Then the Hindu Rishi's Philosophy teach the same thing when they say :

"The Word is Brahma."

The Mimansakas say that Devatas (Gods) expressed by such words as Agni, Marut, Varuna &c., were not

existing personal deities to whom these names were given, but that they come into existence and vanish with the application of the will force (Mantra) embodied in the words. For will force embodied in words generates existences.

The Law of Karma is understood in the light of the same principle of faith. Will power as embodied in a particular deed never exhausts itself. It transmigrates from the shape of one action into another, until there is salvation by the Sadhana (religious purification).

2. MIMANSA LITERATURE.

Dr. Ballantyne makes certain observations on the Sutra literature generally. He says as follows :—

“The great body of Hindu Philosophy is based upon six sets of very concise Aphorisms. Without a commentary the Aphorisms are scarcely intelligible, they being designed not so much to communicate the doctrine of the particular school, as to aid, by the briefest possible suggestions, the memory of him to whom the doctrine shall have been already communicated. To this end they are admirably adopted ; and, this being their end, the obscurity, which must needs attach to them in the eyes of the uninstructed, is not chargeable upon them as a fault.”

Ballantyne's
observations
on Sutra
literature.

There is no doubt that there are Sutras here and there which would be unintelligible without the aid of the commentaries. But the Sutras are so framed that they constitute one thread of ideas from the beginning of the book to the end. If one would read merely an isolated Sutra, without looking to what precedes and to what follows it might be unintelligible. But reading the

The style of
the Sutras

Sutras in the light of each other, that is, with what is called Sangati (concordance) they generally present little difficulty. Savara Swami too observes that the language of the Sutras is plain, and the terms used have an ordinary sense.

JAIMINI'S SUTRAS DIVISIBLE INTO TWO CLASSES.

Classification
of Jaimini
Sutras.

Jaimini's Sutras relating to interpretation may be divided into two classes : (1) Sutras enunciating general principles (2) Sutras which expressly refer to particular texts of the Vedas with regard to some one or more points requiring interpretation in such texts. The latter class of Sutras is generally in the shape of illustrations of the general Sutras.

A ROUGH IDEA OF THE PROBABLE AGE OF JAIMINI.

Age of
Jaimini.

Like that of every other ancient writer of India, it is impossible to fix the time when Jaimini lived with any degree of certainty. Yet one should get a rough idea of the probable time of Jaimini.

The following facts may be taken into consideration in speculating Jaimini's age.

(a) The term *Mimansaka* occurs in *Mahabhashya*. It is very probable that this refers to the subject of the *Purva Mimansa* as the term also occurs there in contradiction to *Auktika* (Sec. I. St. xiii, 455, 466).

(b) Though the name of Jaimini is mentioned in the *Puranas* as the revealer of the *Sama Veda*, there is no mention of his name in the Vedic literature.

(c) Though the word Jaimini is irregularly formed, it is not mentioned in *Panini* or the *Mahabhashya*.

(d) *Panchatantra*, the date of which is more or less ascertainable, mentions Jaimini as the author of *Mimansa*.

(e) The names of many teachers are mentioned in Jaimini Sutras, as for example, Badari, Badarayana, Labukayana, Aitisayana. The names of some of these are found in works such as Taittiriya Pratisakhya, the Srauta-sutra of Katyayana, Kaushitaki Brahmana, Brahma-Mimansa-Sutra.

(f) The leading commentator of Jaimini is Savara Swami, whose work again is the subject of Kumarila Bhatta's commentary. The commentary of Savara Swami is cited by Sankara in Vedanta-Sutra-Bhashya III, iii, 53, and Kumarila Bhatta has been identified by the scholiast of the Prabodhat-Chandradaya with Tautatita.

(g) Mimansa Sutras are mentioned by Bhartrihari whose date of death has been ascertained to be 650 A. D.

(h) The fact ascribed to Jaimini that he has made certain Sutras simply relating to the interpretation of certain Mlechlha words, as Pika, Tamarasha, Nema, &c.

(i) The mention of the Mimansa in the Yajna-vaikya Samhita.

But I, for one, am not disposed to think that speculations on the basis of facts as given above can serve any great useful purpose in arriving at anything like a precise time of Jaimini's life. Chronolgical speculations on the lines of western writers are interesting, but I am not a fervent believer in their efficacy.

When Jaimini's Sutras were composed, no Smriti works in any elaborate shape existed. I have shown this before. So the Aphorisms must date before the existing metrical works of Manu and the rest. They certainly preceded most of the Pauranic works. There is nothing clear to enable a comparison between

Jaimini's time and that of Panini. Jaimini's followers utilise the grammatical doctrines of Panini, but not he himself. It is very hard to argue anything from this. The Sutas, however, bustle with peculiar grammatical doctrines not agreeing with those of Panini.

Anyhow the theory which Sir John Edge accepted in his judgment in the case of *Beni Prasad v. Hardai Bibi** that Jaimini lived in the thirteenth century of the Christian era" and that "he was consequently subsequent in date to the Mitakshara" is certainly incorrect.

Sankaracharyya cites Savara Swami who wrote the commentary of the Sutas. Savara Swami's commentary again was not the first commentary on the Sutas. These had been annotated by Bhagwan Upavarsha before Savara Swami. So a considerable time must have elapsed between the composition of the Sutas and Savara Swami's comment. Again Savara Swami must have lived a pretty long time before Sankara whose age is believed to be 900 A. D. In fact, the Sutas must have existed before 650 A. D. ; because they are mentioned by Bhartrihari, the date of whose death has been ascertained to be 650 A. D. Further Jaimini must have lived before the time of Buddha Deva ; because the record of Buddha Deva's life show that he studied the six systems of philosophy including Jaimini's systems.

Leaving Jaimini, the founder of the Mimansa system, I shall give you a succinct account of his leading followers and commentators.

* J. L. R. 14, All. page 67.

1. BHAGAWANA UPAVARSHA, THE FIRST COMMENTATOR.

The first annotator, as Mr. Colebrooke has, on good grounds, made out, was Bhagawana Upavarsha. Mr. Colebrooke calls him Jaimini's scholiast. Bhagawana Upavarsha has undoubtedly done a great service to the world of Hindu believers. He has sifted all the difficult, abstruse, seemingly objectionable and unintelligible passages from the Vedas and placed one or more of them under each Sutra of Jaimini. The result has been that those general and abstract Sutras of Jaimini, in which he made no mention of any particular texts, have now been all associated with one or other particular text of the Vedas. As said before, this was a great service to those who had to deal with the Vedic texts. But it is not an unmixed good to us who are concerned with general principles of interpretation.

Bhagawana
Upavarsha.

2. SAVARA SWAMI, THE WELL-KNOWN COMMENTATOR.

Then the Sutras, illustrated or saddled with all these various Vedic texts by Upavarsha, go into the hands of the venerable Savara Swami. And his commentary is the most elaborate work on the subject. But, as might be expected, his learned discussions may be analysed into two parts : (1) The explanation of the general principles enunciated by Jaimini. (2) A thorough disquisition from every point of view of the Vedic texts either referred to by Jaimini originally or introduced by Bhagawana Upavarsa. And unfortunately the second element of his work has sometimes overshadowed the first element.

Savara
Swami.

Savara Swami is an ancient writer. He must have preceded Sankaracharyya by a pretty long period, as he was an old authority when Sankara cited him as such. His sanskrit is of an archaic character. There are two editions of his work that I have come by ; one of these is by Pandit Jivananda Vidyasagara and another by Pandit Mohesh Chandra Nyayaratna. The latter edition is apparently not available in a complete form. But you may easily get the former edition.

3. KUMARILA BHATTA.

Kumarila
Bhatta.

Then it appears, the next great worker in the field of Mimansa was Kumarila Bhatta, generally called 'the Bhatta,' though according to tradition he had a rival in Guru Prabhakara. It has been shown that there was some difference in the views of these two Mimansakas. But the difference seems to have been more with reference to philosophical doctrines than to the rules of interpretation. It appears that Kumarila Bhatta was the first in systematising the general principles of the Mimansa Sutras, with a view to practical questions of interpretation. It seems that he was the first to explain pointedly the distinctions made by the Sutras between Vidhi, Niyama and Parisankhya. Kumarila composed metrical couplets or Slokas embodying the general principles of Jaimini's work in pithy and short language. These are called Bhatta Padas.

Kumarila Bhatta's great work is divided into three books. The first containing a metrical exposition of the first chapter of Jaimini's Book I. It deals fully with the philosophical portion of Jaimini's Sutras and is the most bulky of Bhatta's three books. It is named

Sloka Vartika. His second book is in continuation of the first and embraces the explanations of the Sūtras, mostly on the lines of Savara from the commencement of the second chapter of Book I to the end of Book III. The explanations are partly in verse and partly in prose and the book is called *Tantravartika*. Kumarila's third Book follows up the Sūtras from the beginning of Jaimini's Book IV to the end of the work. It is wholly in prose and the explanations are of a running character. This book is called '*Tūptika*'. I got the Benares edition of these books, the Bombay edition of them not having been out.

The following account of Kumarila Bhatta is from Colebrooke's *Miscellaneous Essays* : *

"Kumarila Bhatta figures greatly in the traditionary religious history of India. He was the predecessor of Sankaracharya, and equally rigid in maintaining the orthodox faith against heretics, who reject the authority of the Vedas. He is considered to have been the chief antagonist of the sect of Buddha, and to have instigated an exterminating persecution of that heresy. He does, indeed, take every occasion of controverting the authority and doctrine of Sakya or Buddha, as well as Arhat or Jina, together with obscurer heretics Baudhayana and Masaka ; and he denies them any consideration, even when they do concur upon any point with the Vedas. The age of Kumarila, anterior to Sankara and corresponding with the period [299] of the prosecution of the Buddhas, goes back to an antiquity of much more than a thousand years. He is reputed to have

* Volume I. p. 323.

been contemporary with Sudhanwa, but the chronology of that prince's reign is not accurately determined."

4. GURU PRABHAKARA, THE REPUTED RIVAL
OF BHATTA.

Prabhakara.

The works of this famous Mimansa leader are not extant. But with great difficulty I got a work by one of his chief followers named Satinath Misra. This work is named, *Prakarana Panchika*. An edition of this book is to be found at Benares. This is rather a philosophical treatise on Prabhakara's views than a treatise on interpretation.

5. MADHAVACHARYYA, THE AUTHOR OF THE
NYAYA-MALA-VISTARA.

Madhava-
charya.

Next in importance to Kumarila Bhatta is Madhavacharya. In his great work—the *Nyaya-Mala-Vistara*, he in many cases, notices the view of Guru Prabhakara, side by side, with those of Bhatta. His book consists of an enumeration of *Nyayas*, their substance being reduced to *Slokas* or metrical forms. In each *Adhikarana* he shows a general principle as applied to a particular Vedic text which Bhatta chose to adopt out of the various texts shown in Savara Swami's commentary.

Madhavacharya's *Nyaya-Mala-Vistara* was printed by Theodore Goldstucker in the year 1865. I was fortunate to get a copy of this great Mimansa work. Madhava says that he has converted the great ocean of the Mimansa into a play tank.

Mr. Colebrooke gives the following account of Madhava's life ;

"Madhava Acharya was both priest and minister or civil as well as spiritual adviser of Bukka Raya and Harihara, sovereigns of Vidyanagara on the Godavari, as his father Mayana had been of their father and predecessor Sangama who ruled over the whole peninsula of India." 1

1. [The Ballal dynasty of Kanata was conquered by the Muhammadans A. D. 1310, in the reign of Alauddin Khilji, but the country regained independence during the confusion of the later years of Muhammad Tughlak's reign about 1344. A new dynasty succeeded to the old, and a new capital was founded at Vidyanagar or Vijayanagar. Local tradition ascribes the founding to two princes Bukka Raya and Harihara, with the aid of a learned Brahman, Madhava Vidyaratna. The popular date for this event is 1258 of the Salivahana era (A. D. 1336); but Wilson thinks that this is too soon. The earliest copper land-grant of Bukka Raya is dated A. D. 1370, the latest 1375 (cf. also vol. ii p. 227); some traditions give thirty-four years for his reign, others only fourteen (Wilson's Mackenzie catal, vol. i pp cxi. ch ii, 289-291). The kingdom lasted till the fatal battle of Talikota, A. D. 1564, when it was overthrown by the united armies of the Mahomedan kings of the Deccan. For the fullest account of Madhava; see Mr. A. C. Burnell's preface to his edition of the *Vyas-Brahmana*, Mangalore, 1873. He gives strong reasons for considering Madhava and Sayana to have been the same person. Madhava is said to have become the head of the Sringari Malha, when he was 36 years old in 1331].

6. PARTHA SARATHI MISRA, THE ANNOTATOR OF KUMARILA BHATTA'S WORKS.

Partha Sarathi Misra is to Kumarita Bhatta what Kumarila himself is to Savara Swami. His commentary

Parthasarathi
Misra,

on Kumarila's Sloka Vartika is a big book and is named Nayaya-Ratnakara. This commentary is found in the Benares Edition of Sloka Vartika. Partha-Sarathi Misra's another work is Shastra Dipika, which has been edited by P. S. Rama Misra Shastri. The Benares Edition of this book has been consulted by me. The Shastra Dipika purports to be an original commentary on the Jaimini Sutras, but it is really a digest of Kumarila Bhatta's views.

7. KHANDADEVA.

Khandadeva, like Parthasarathi Misra, is a teacher of Kumarila Bhatta's School. His work called Mimansa Kaustubha is a very lucid exposition of the Sutras. Of this work I have been able to get only the portion dealing with the Arthavadas or the second Chapter of Book I.

Khandadeva's work called Bhatta Dipika is a comprehensive book in which he has reviewed the views of Partha Sarathi Misra and Madhavacharya. His work named Bhattarahasyam which has been edited by P. B. Ananthachariar has been printed at Conjeveram. He treats in detail the grammatical principles of construction taught by Kumarila Bhatta.

8. GAGA BHATTA.

Gaga Bhatta's work is Bhatta-Chintamani. That section of it which is called Tarkapada has been published at Benares. This Tarkapada is a valuable contribution to the Mimansa literature, and explains many of the important Bhattapadas, among others the celebrated Pada on the definition of Vidhi, Niyama and Parisankhya.

9. SOMANATH.

Somanath is the author of *Mayukhamala*, which is a gloss on *Shastra Dipika* by Partha Sarathi Misra. Somanatha.

10. RAGHAVANANDA.

Raghavananda's work is named *Nyayavali Didhiti*. It is an excellent interpretation of the *Jaimini Sutras* expounding it word per word in the manner of a perpetual comment. Raghavananda.

11. VEDANTADESIKA.

His work *Mimansa Paduka* is a short work in *Sragdhara* metre discussing in order the *Adhikaranas* of the first chapter of the first Book. This Book has also been printed at *Conjeveram*. *Vedanta-Disika* has written also another work called *Sheswara Mimansa* in which he attempted to reconcile the *Jaimini Sutras* with the *Vedanta Sutras*. Vedantadesika

12. APPYA DIKSHITA.

Apyaya Dikshita's work called *Vidhirasayana* is a work of great note. It has been printed at *Benares*. I have had to refer to this book in connection with the subject of the classification of *Vidhis*. Apya Dikshita.

13. BHATTA SANKARA, THE FATHER OF
NILAKANTHA.

His work called *Mimansa-Bala-Prakash* is a very useful work illustrating the *Sutras* by examples and by classification of the matters treated in the *Sutras*. His treatment of the subject of *Badha* is very practical. *Bhatta Sankara's Mimansa-Sara-Sangraha* which is a synopsis of the *Sutras* is also a very serviceable small book. Bhatta Sankara.

14. NARAYNATIRTHAMUNI.

Narayana-
tirtha Muni.

This author's Bhatta-Bhasa-Prakasha which is available at Benares is a lucid compendium of the Sutras.

15. RAMESWARA SURI.

Rameswar
Suri.

His work Subodhini, an edition of the Sutras with short notes, has been reprinted at Benares from the Pandit.

16. UDICHYA BHATTACHARYA.

Udichya
Bhattacharya.

His work called Adhikarana Kaumudi contains the exposition of a number of useful Adhikaranas or Nyayas. It has been printed in Calcutta by Pandit Mathuranatha Tarkaratna in Bengali character.

17. LAUGAKSHI BHASKARA AND APADEVA.

Laugakshi
Bhaskara,
Apadeva.

The Artha Sangraha by the former and the Mimansa-Nyaya-Prakasha by the latter are handy works of great value. In fact, they are the works which the students of the Mimansa Shastra generally read in this part of the country. These authors flourished during the Muhammadan period. During this period the Mimansa literature appears to have attained very great dimensions. The Mimansa works of this period do not aim so much at the exposition of the Sutras as a whole, but singles out particular Sutras with a view to show their bearings on the Smṛiti law :

It is interesting to note in this connection that certain families made the study of Mimansa their specialty. For instance, Apadeva has written a number of Mimansa works such as Mimansa-Nyaya-Prakarna-Adhikarana-Chandrika, Vadkautubala, and

Apadeviya, of which some, specially the first, is regarded as a standard Mimansa book by the students of the Smriti. His father Anantadeva was a reputed Mimansa writer, being the author of Deva-Swarupa-Vichara, while his son Jivadeva also wrote a Mimansa work named Bhatta-Bhashkara.

Laugakshi Bhashkara is the author of Arthasamgraha, whose work is a text book of the Calcutta University, both in the subject of Mimansa and Smriti. His father Mudgala Bhatta is the author of the Mimansa works, Bhabana-Samgraha and Bhabakalpa-lata.

18. Rangaraja-Dharindra is the author of a Rangaraja. Mimansa Paribhasa.

19. Ram Chandra Bhatta is the author of Vidhi- Ram Chandra Vada and Adhikarana-Mala.

From the existence of the above-mentioned mass of Mimansa literature you will see how earnestly the Mimansa principles and rules have been appreciated and regarded by the Hindus.

LECTURE XIII.

A RESUME.

To search out, from the huge mass of Mimansa Literature which is not, in all respects, clear for our purposes, practical and useful propositions for the interpretation of the Hindu Law, is a task of considerable difficulty. I have tried my best to fulfil this task. Leaving out the Introductory Lecture in which I have given you an idea of the nature of the subject of interpretation in general, and of the manner in which the Mimansakas treat it, with an incidental exposition how they define and classify laws, I would start with the second lecture to give a short resume of the subject. In that lecture I explained to you what are the axioms and the general principles of the Mimansa system of interpretation. In modern works on interpretation there is no attempt to sort together what would be the elementary rules in the nature of axioms as contradistinguished from rules and principles, more or less of a complex character, each of which requires a great deal of disquisition to make it clear. The Mimansa writers suggest such a distinction, and I have made it, calling the elementary principles axioms of interpretation and describing the complex rules as general principles of interpretation.

A resume

Then having devoted the second lecture to those two topics, in the third lecture I dealt with what I have called the subject of *application* of texts, as contradistinguished from the topic of interpretation of texts.

This is a distinction not observed in our modern books of interpretation. But really there is a difference between the task of making out the meaning and the force of the words of a text, and the task of considering, with regard to matters more or less extraneous to the text, as to how and for what purposes the text is intended to be applied. This distinction is suggested by the treatment of the subject and so I have not hesitated in making the distinction. Thus in the third lecture I have dealt with the topics—whether a given text is intended as a positive rule of law or a rule of discretion, to what persons or classes of persons it would apply, how it would bear on other texts and how it should be modified when so bearing on other texts.

So long the question of interpretation has been more or less limited to the matter of text law *i. e.*, law laid down by or in direct texts. But there is a class of law in every country springing from custom and usage, sometimes called the Common Law. In the Hindu Law—the Smritis are regarded in this light in comparison with law contained in the Vedas whatever that might be. From the very nature of things, additional rules of interpretation are necessary to deal with the construction of this class of laws—the Smritis which, however, practically forms the main body of the Hindu Law, if not the sole body. The Mimamsakas formulate a number of general rules for the interpretation of the Smritis and the Hindu Law of usage. These general rules are formulated and discussed in the fourth Lecture.

The following three lectures fifth, sixth and the seventh all relate to what are called Nyayas or Maxims

of law. I believe you are familiar by this time, with what a Naya is. You have seen in some cases it is equivalent to the head note of a case, embodying as it does in many instances the result of a discussion *pro* and *con* on a given point.

In other cases, for instance, in what are called Laukika Nyayas or popular maxims, a Nyaya is either the current expression of a happy humour or of a thoughtful conclusion. In the fifth lecture you have had an exposition of some important Nyayas regarding the meaning of words as well as the meaning of sentences in general. In the sixth lecture I tried to explain somewhat fully the Nyayas regarding negative Vidhis and conflict of texts. You have no doubt appreciated the distinction the Mimansakas make between what they call Pratishedha and Paryudasa. That from the former arise considerations of contradiction and from the latter those of provisoes and exceptions. You have seen that conflict arises only from contradiction and, Mimansakas will not construe a text as involving contradiction so long as it can be construed as merely involving a qualification or limitation. In the fifth lecture I have also explained certain rules of Badha (one text nullifying another) as bearing upon the reconciliation of conflicts and have made it clear that Badha is a particular case of contradiction in which one of the mutually hostile propositions is weaker than the other. In this Lecture certain rules laid down by the Smriti writers as to cases of conflict between the letters of the Smriti Law and what they call Arthashastra have also been explained, and it has been shown that Arthashastra as used in

the above texts does not mean political economy, but considerations of equity on the basis of the Shastras.

The seventh lecture on the popular maxims has introduced to you a subject which is not only interesting from legal point of view but also from many other points of view. As regards the legal point, you will remember that some of the popular maxims are identical with some of the very essential Mimansa maxims. A few of them coincide with the legal maxims of the Roman Law. I have explained to you how these popular sayings are naturally requisitioned in investigating questions of law as they do in other departments of investigation. In fact, it has been pointed out that they may well be brought within the range of some of the Pramanas of the Mimansa Shastra.

That valuable popular practice by which authors are required to avow their responsibility and to declare the subject and purpose of their works has also been referred to in this lecture.

The eighth lecture takes you to the field of the prevailing law of the time *viz.*, that settled by the founders of the two great schools—Dayabhaga and the Mitakshara. For practical purposes we are for the most part called upon to interpret the writings of these two great authors. So it has been necessary to show the lines on which these authors proceed in their respective works and to point out the points which they take as their starting points.

I think by this lecture you understand the basical and the crucial points of the Dayabhaga and the Mitakshara. In the eighth lecture I have also put before you most of the instances in which they appeal to the Mimansa maxims

and discuss them. This is important as showing that these authors looked upon the Mimansa rules as the legitimate and authoritative guides of interpretation. No doubt, their discussion of Mimansa principles is in some cases academic, as for instance, in the case of the long discussion of Jimutavahana on the Dwyo Pranayanti Maxim. Nevertheless the long discussion on the Dwayo Pranayanti maxim is interesting, especially as, by a freak of fortune, this maxim of which Jimutavahana makes so much of, has been flagrantly violated in construing the Dayabhaga in a vital part of it.

In the ninth lecture the use and application made of the Mimansa maxims by other notable jurists have been shown by instances. The authors who have been referred to are Nilakantha, Medhatithi, Kulluka Bhatta, Raghunandan and Nanda Pandit. I have given a prominent place to the Mimansa discussions of Nilkantha, because his position in the Bombay Presidency is like that of Jimutavahana in Bengal. I have given his views at length in respect of interpreting the texts bearing on the question of eligibility or otherwise of sister's sons &c for adoption, though their Lordships of the Privy Council have not accepted his views. The application of certain maxims by Medhatithi and Raghunandan has been shown not so much to elucidate those maxims as to show that these authors felt themselves bound to support their positions by the authority of the Mimansa Sutras.

In the second part of this lecture I have tried to explain to you three great ideas which have more or less influenced the Smriti writers *viz.*, the protection of the family, individual development and cultivation

of religion. I have dwelt on these topics because they are the beacon lights of interpreting the sense of dubious passages. In the tenth lecture I have dealt with the very important subject of the administration of the Hindu Law since the beginning of the British rule. Having selected a few important subjects, I have shown to you in this lecture in a cursory manner how the British Courts have interpreted the Hindu Law and how in some cases their decisions are in conformity with the old Hindu rules of interpretation ; although in some, and that too on vital points, their interpretation is not supportable by the orthodox Mimansa principles. After these three lectures of great practical importance *viz.*, lectures VIII, IX and X I have fallen back on certain topics which are somewhat of a theoretical importance. So the eleventh lecture is devoted to a regular comparison between the Mimansa system and the modern English system of interpretation. In the early lectures no opportunity had been lost to point to the correspondence between particular principles of the one system to those of the other. But this having been done in a straggling and incidental manner, it was desirable to show the resemblance or otherwise of the two systems in a regular and collected shape. In this lecture at the outset I undertook a comparison between certain important Roman maxims and the corresponding provisions of the Mimansa Shastra.

The twelfth lecture is a fuller presentation of certain Mimansa topics, already touched upon in the introductory lecture. The archaic form in which the Mimansa writings present matters, renders repetition in some cases necessary in order to make one familiar

with them. In the second part of this lecture I have tried to give you a touch of the Mimansa Philosophy, and to furnish you with a connected view of the Mimansa literature. The above shows how the lectures have been conducted. The ground covered by the Mimansa literature was hitherto untrodden by any lawyer with modern needs. Thus my work was beset with the difficulties of an antiquarian research. At the same time I was bound to make it easily comprehensible to my students. So many defects are expected. I hope, however, that notwithstanding defects, my labours will secure some useful addition to the legal literature of the day.

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PAGE.

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	PAGE.
Adhyahara—importance of, in relation to Vakya principle...	142
— included in Vakya principle	141
— resorted to by Jimutavahana	142
Adityapurana— cited by Raghunandana	235
Adopted son—or the reflection of a son	205, 215
Adoption construction of texts of Vashishtha and Saunaka as to adoption of an only son by Mimansa Rules	452
—four maxims referred to in Dattaka-mimansa in connection with	423
—interpretation of Hindu law regarding, by the Courts under the British Rule	441
—law of, as interpreted by Nilakantha and Nanda Pandit	417
—of an only son, the decision as to the validity of, is not in accordance with Mimansa Rules	451
—of mothers' sisters' son, daughters' son and sisters' son invalid	459
—of a son, by one of the co-widows, effect of,	427
—prohibition of the, of an only son	458
—three debts maxims invoked by Nilakantha to explain the subject of	420
—writers on the law of, referring to Amiksha Nyaya	395
Agnihotra—daily and monthly	201
Agnipurana—a work of post Baudha period	22
Ajyani—a class of bricks	278
—name of a mantra, in Taittiriya Sanhita became a maxim	132-133
Akriti—	265
Ambiguity—patent and latent	490
Amiksha maxim— referred to by the author of the Dattaka Chandrika in discussing the effect of adoption of a son by one of two co- widows... ..	427
Anandagiri—quoting popular maxims... ..	355
— „ Sruti maxim	121
Anarabhyadhita Vidhi—Dr. Thibaut on	54

INDEX.

iii

	PAGE.
Anarthakya—Mimansa correspondence of presumption against superfluity	8
Anarthakya dosha—... ..	79
Anarthakya dosha—commented upon and illustrated by Jimutavahana	80, 81
—in Vidhibannigadadhikarana	79
—in the discussion of the digest-writers, such as Jimutavahana and others	80
—is appealed to, in Arthavada	79
—recognised by modern writers	82
—Vakya is often resorted to in avoiding... ..	140
—Vedas having—cannot claim eternity (objection)	79
Ancient text—and modern text	273
Anusanga Nyaya—Jaimini on	142
Anuvada—its importance in matters of law	177
—Jimutavahana referring to	177
Anvaya—another name of Vakya	146
Apaccheda maxim—as explained by Jimutavahana	402
Apadeva—his explanation of the four principles	107
—his definition of Linga	125
—his view of Linga	126
—Mimansa Nyayaprakasa by... ..	520
—on Artha of a word	285
Apakarsha—and Upakarsha	141
Apastamba—Grihya and Dharmasutras of	14, 28
Aphorisms—Jaimini's, their scope and object	30
Application of texts—Arthavada in... ..	172
—Atidesha (principle of reference) in.	198
—Badha (principle of incongruity) in.	213
—distinction between interpretation and of	169
—Divisions of texts with reference to,	170
—General principles of, explained	169
—Hetubannigadadhikarana in.	175
—Rules as to	169
—Vidhibadnigadadhikarana in.	172-175
—Uha (principle of adaptation) in,	207

	PAGE.
Apraptabadha—definition of	216
—illustration of	217
Apurva sanction—with reference to Janmasthami ceremony, as illustrated by Raghunandana. ...	432, 35
Apyadikshita—treatment of Niyama Vidhis by	120
—Vidhirasayana by	519
Arthaikatva axiom—its authority	66-7-9
Arthibhavana—	56
Arthakarma—as dealt with by Jaimini	53, 187
Arthakrama—	196
Arthashastra—authority of	66-7
—meaning of	213, 337
—by Amarakosha	213, 316
Arthavada—adoption of, in reconciling two contradictory texts	92
—concomitant of Vidhi	38
—degree of subordination of	91
—distinction between Vidhi and	37, 40
—how distinguished from Vidhi by the applica- tion of the Hetubannigadadhikarana ...	175
—in Vedic law, what it is	171
—it is non-obligatory	172
—illustration of, from Jimutavahana	174
—may be a Śruti, as explained by Kumarila	121
—not to be raised to Vidhi	88
—other name given to, by Jimutavahana and Vijnaneswara	88
—seeming conflicts reconciled by	332
—sometimes confounded with obligatory texts ...	172
—subdivision of, into Anuvada, Gunavada and Bhutarthavada	177
Aruni maxim—the text, an illustration of the Vakya principle	141
Arthi—plaintiff	316
Ashwalayana—Grihya and Dharma Sutras of,	14, 28
Assesors—	1 8
Assumpsit—a class of litigation	199
Atidesha—application of, to adopted son	205-206
—as explained by Savara Swami	201

INDEX.

v

	PAGE.
Atidesha—classification of, by Savaraswami	201
.. —by later writers	203-4
—duties implied by	203
—general and special, as treated by Jaimini	202
—illustration of, from Acharakanda of the Smritis	202
—meaning of, as indicated by Jaimini	200
—meaning of, as indicated by Moheswara and Chudamani	204
—modern and old sense of	204
—necessity of	194
—principle of, as discussed by Raghunandana	434
—Quotation from Maxwell in connection with	207
—the law of gifts is made applicable to that of wills by way of	411
Atreya—a text of	194
Avapa—reverse of Tantrata... ..	220
Axioms—affecting Interpretation	7
—applicability of, to Vyavahara law	91
—discussion of	78-98
—presumption against superfluity	7
.. .. contradiction	8

B

Badarayana- on women and Sudras	194
Badha—and Avapa, as discussed by Jaimini	213
—applicability of, to Smriti texts	219,220
—definition of	90,200,198
—reconciliation of conflicting texts by	219
—Sree Bhatta's two-fold division of	215
—with regard to positive texts	214
.. .. negative texts	215
Ballantyne, Dr.—his translation of the first two Sutras of Jaimini	30
Banerji, G. D.—his observation on Sutra Literature	509
Bauddha Shastras—valid or useless	244
Barhi—two meanings of	130
—primary sense of, accepted	130

	PAGE.
Barhi Nyaya--as explained by Laugakshi	131
--a prakarana of Darsapauarsnmasi Nyaya ...	129
--illustration of Linga principle	129
Bhagawan Upavarasa -the first commentator of the Vedas	513
Bhamati--Sruti Maxim in	121
Bhartrihari--died in 650 A.D.	
Bhattachasankara--Mimansa Bala Prakash, Mimansa Sara Sangraha by	519
Bhikshas--a kind of tax	26
Buhler--considers Sutras as more recent	16

C

Chodana- its relation to karma	47
-- positive and negative	37
-- Pradhana (or primary command)	46
-- Vedic command, if obligatory	37, 35
Chudmani--on Atidesha	204
Colebrooke- on the Adhikarana that the king hath no ownership in the soil	346
-- on usage as narrated by Kumarila	256
-- translation by, of the first two Sutras of Jaimini	30
Condemnation--by Sruti and Smriti	248
Conflict of texts--as dealt by Savara Swami	219
--between a Smriti text and a Vedic text by Oudumbari text	233, 234
--between Smriti and Veda in regard to positive civil law	234
-- between Smriti and Purana	234
--no, between different-Sakhas	96
--of usages in the same and different localities	251
--option in cases of direct,	97-8
--reconciliation of, by the Arthaveda prin- ciple	92
--reconciliation of, between positive and negative texts	93
--reconciliation of different texts by Jimuta- vahana	94, 95, 96

INDEX.

vii

	PAGE.
Conflict of texts—reconciliation must be, in case of Smriti texts	96
—Siromani, Dr. J., N. on	335
—Sree Bhatta Sankara on	336
—Vedic, must not be assumed	96
Construction—avoiding Anarthakya,	8
—four principles of Mimamsa, viz., Sruti, Linga, Vakya and Prakarana	6
Construction—four principles of, in English books	5
—English books on	7
—Liberal, when applicable	7
—Mimamsa rules of, substantially agree with the modern English principles of construction	482
—of statute, superfluity to be avoided	7
—of shyena text, seems to be suggested by Jaimini Sutra I. IV. 2... ..	179
—of words and sentences of a statute	4
—seven principles of, in Smriti	227
—verbal, resorted to, where	445
—vikalpa	8
Contract—maxims relating to	478
Courts—constitution of king's	496
—constitution of state, in the third period as given by Colebrooke	17-18
—duty of	1
—ecclesiastical	495
—popular courts more enlarged during Baudha period	23
—popular courts	18
Covenant—correspondence with modern legal ideas	230
—detailed consideration of	231
Customs—decided cases regarding, harmonize with the Mimamsa principles	463
—in harmony with the Vedas prevail	463
Custom and usage—Hindu, cases decided by the British Indian Courts regarding	462
—important source of law in the second period	15

	PAGE.
Custom and usage—Third grand source of law as declared by Manu	14
Customary law—is local though Vidhi general	256
—is recognised by Mimansakas in case of worldly matters	258
—of the Hindus is of homogeneous character	225
—Savara Swami's reading of foreign (mleccha) custom and usage	225
Customary law—seven principles of construction of	227

D

Dalapati—a minister of Nizamshahi Dynasty	24
Dami—meaning of, in Barhi Devasadanam dami	129
Darsha Purnamashi—(model Yaga)	200
Darvihoma—	238
Dattaka chandrika—applying principle of Atidesha to adopted son	205
—quoting kapijjala maxim	280, 427
Dattaka Mimansa—by Nanda Pandit	133-22
—four maxims in connection with adoption referred to, in	423
—Pranabhrita maxim referred to in	278
Debt—three debts maxim, treated by Sankara Bhatta	423
—as explained by Savara Swami	435
—the great influence of the three debts maxim on Hindu nation	437
Detinue—a class of litigation	199
Dharma—duty, definition of—	30
Dharma Sutras—are merely literary works as G. D. Banerji says—	17
—are not literary works as the History shows—	17
—are binding treatises as T. N. Mitra says—	17
—Change to Samhitas or Dharma Shastras—	16
—Of Apastamba, Ashwalayana, Baudhayana, Gobhila, Paraskara, Sankhyayana, Vashishtha	14, 15

INDEX.

ix

	PAGE.
Drishtamulaka Smriti apramanya adhikarana	227
—Apastamba's view of	238
—its validity is questioned in case of selfish motive	238
—Kumarila Bhatta's view of	237
—Mandlik's view of	235
—Savara Swami and other Commentator's view of	236
—Siromani's view of	238
—Sutra relating to	228
—Sutra speaks of motive only	235
—The Sutra has in view the Visarjana homa	237
Dwayo pranayanti maxim—as explained by Jimutavahana...	401
—bearing of, on the general arrangement of the mimansa system	404
—Explained	324
—in connection with widows' right to succeed to husband's property	398
—violated in interpreting Jimutavahana... ..	405

E

Ecclesiastical Courts—Their functions	495
--	-----

F

Factum Valet—doctrine of, attributed to Jimutavahana ...	395
—doctrine of, miscalled as	406
—in connection with usage law	249
—Jimutavahana resorts to Adhyahara	142
—Misinterpretation of, by the English Judges	406
—misinterpretation of, violates the Linga, vakya and Prakarana principles	410
—Whether the doctrine of, shared by Vijnaneswara ...	396
Family—maintenance of, texts regarding	413
—institution, pervading influence of	439
Family corporation—principle of, advocated by Jimutavahana and Vijnaneswara	389

	PAGE.
Family—continuity of, up to great grandson	414
Father—his power over ancestral and self-acquired property	405
—his power, under the Bengal school to dispose of ancestral and self-acquired property	409
—Jimutavahana's view, about father's power ...	405
—nature of father's ownership over ancestral and self acquired property	409

G

Gaga Bhatta—Bhatta Tarka pada by	270,518
Garhapatya maxim	119,159
—its effect	120
—may mean Indra by Linga principle ...	128
— „ „ house-hold fire by Sruti Principle ...	128
—Vakya Principle plays a subordinate part in explaining	159
Gautama Sutra—different interpretation of, by Vijnaneswara and Jimutavahana	391
Ghee—in Sandigdhartanirupanadhikarana	138,139
Gifts—text of Vyasa, on the Subject of	412
—The law of	410
—to non-existent beings—validity of	412
Gobhila—Grihya and Dharmasutras of	14
Grihyasutra—of Apastamba,	14
—of Ashwalayana	14
—of Baudhayana	14
—of Gobhila	14
—of Parashkara... ..	14
—of Sankhayana	14
—of Vashishtha	15
Guna Pradhana Axiom	60
Guna Vidhis—Subordinate to Viniyoga Vidhis	90

H

Hard castle—Henry, Book on interpretation	2
--	---

INDEX.

xi

	PAGE.
Hetubannigadadhikarana—an important principle of distinguishing Arthavada from a Vidhi	175
—illustration of	176
—Jaimini's answer explaining it	175
—relates to religious matters	258
—unwelcome customs disappear by the help of	260
Hindu Jurisprudence—its identity with spiritual law	497
—Mimansa Dharma	493
—Kratu Dharma... ..	493
—Vyavahara Dharma	493
Hindu law—codification of, in the third stage	16
—Divine right of the king has no place in	496
—has sanction, its nature	493,494
—history of, first stage	12
—second stage	13
—third stage	16
—fourth stage (Bauddha period)	19
—fifth stage (Mahomedan period)	24
—how administered during the Mogul period	27
—importance of rules of interpretation in,	10
—independent of sovereign power	11
Holaka maxim	83,252-3
—conclusion of the Holaka Sutras	255
—English equivalent of	85
—Jimutavahana referring to	84
—meaning of	254
—opponents view of	254

I

Illegality and irregularity -distinction between	488
Inheritance—different views of Vijnaneswara and Jimutavahana regarding	388
—exclusion from, by reason of certain causes of disability	332
—principles of, how developed	387
Interpretation—Arthajkatva axiom of,	83-89

	PAGE.
Interpretation—as treated by Jaimini, Laugakshi, and Apadeva with reference to Viniyaga Vidhis	49
—axioms of, explained	77
—axioms of, ...	69
—axioms of, enumerated	78
—General principles of, ...	70
—specific Rules of	73
—Sarthakya axiom of, ...	78-82
—Laghava axiom of, ...	82-85
—Gunapradhanan axiom of, ...	89-91
—Samanjasya axiom of, ...	91-96
—Vikalpa axiom of, ...	96-98
—Four general principles of, explained	99-106
— „ Laugakshi Bhashkara's explanation of, ...	106-107
— „ Apadeva's explanation of	107-109
— „ Kumarila Bhatta's explanation of	109-114
— „ Savara Swami's explanation of	114-116
— „ Udichya Bhattacharya's explanation of	116-117
—Sruti principle of	119-123
—Linga principle of	123-135
—Vakya principle of	135-146
—Prakaran principle of	146-153
—distinction between application and of	169
—English works on, deal with illustrative cases	7
—general knowledge of principles of, necessity of	268-9
—general lines of, resemblance and difference followed by English and Hindu authors...	481
—Hindu system of, its Vedic origin	28
—illustrative cases of, are Nyayas or Adhikaranas	7
—maxims relating to	479
— „ „ „ of words	271
—Mimamsa principles of, analysis of the subject	65

INDEX.

xiii

	PAGE.
Interpretation—Mimansa rules of, as applied to and as applied by digest writers	383
—Mimansa rules of, correspondance with English principles	57
—Mimansa system of, not by hermenutic method	31
—modern treatment of	2
—necessity of,	7
—observation of Sir J. Edge on, Mimansa system of	24
—of law by Judges	2
—of words	270
—Principles of, in the nature of axioms	7
—Principles of, in Smritis	66
—Principles of, other than maxims	368
—Rules of, importance of	1
—Rules of, regarding Smriti texts and usages	74
—Rules of, their liberal basis in the Bauddda period	24
—Rules of, as dealt by Jaimini Sutras	8
—Six principles of, i. e. Sruti, Linga, Vakya, Prakarana, Krama and Samakhya	49
—Sources of the rules and principles of	65
—Sources of, in Dharma Sutras of Gautama and Apastamba	66
—Subject of, Jaimini reduces to Philosophy	30
—treatment of, by Sir P. B. Maxwell	34
—Two cardial questions of	4
—Utility of the presumption of the substantive law in matters of,	434
—Work on, by Sir F. Dwaris	2
— .. by Mr. Sidgwick	2
— .. by Henry Hardcastle	2
— .. by Mr. Wilberforce	2
Ishuyaga—Where Atidesha made by the Sruti	201

J

Jacob—colonel, author of Laukika Nyayenjali	353
--	-----

	PAGE.
Jacob—colonel, his rendering of maxim <i>Rurhiyogapaharali</i> .	355
Jaimini—age of	510
—his age, 13th century is a mistake	28, 29
—his work, its object stated by itself	30
—his sutras, he sticks to literal principle	143
—laying down three great presumptions of the substantive Smṛiti law	435
—on Arthakrama,	196
—on conflict of usage	251
—on patha krama,	197
—on prabritti krama	197
—on Srutikrama	196
—on Sudras and woman	196
—recognises approved usages	259
—treatment of Laukika Nyayas as Shastra by	353
Jaimini Sutras—classification of	510
—do not invalidate local or tribal customs	259
—the germ of the principle of exclusion from inheritance contained in	191
Jimutavahana—Conception of property according to.	393
—different interpretations of Gautama Sutra by	391
—doctrine of Factum valet attributed to.	395
—Dwayo pranayanti maxim as explained by	401
—his classification of positive vidhis	403
—his explanation of Apachede maxim	402
—his spiritual doctrine of property in accordance with Manu	395
Jimutavahana—his view as to father's power over ancestral and self-acquired property	405
—instance of divergence of opinion between Vijnaneswara and	396
—on Krama Vidhis	197
—principles of spiritual benefit and that of family corporation as advocated by	389
—Quotation from, showing his adoption of Arthavada principle in explaining the <i>Factum Valet</i> doctrine	174

INDEX.

XV

	PAGE.
Jimutavahana—resorts to Adhyahara regarding <i>Furtum Valet</i> controversy	142
—resorts to Linga, Vakya and Prakaran principles of constructions	134
—views of, regarding inheritance and succession, compared with Vijnaneswara ...	388
Judges—interpretation of law, by	2
Jurisprudence—of the Kings' courts and popular courts, knowledge of Mimansa was indispensable for them	18, 19
—Hindu, threefold character of,	493
Justice—administration of, in the first period by heads of Families	13
—“ “ “ in second period by learned men along with heads of Families	15
—“ “ “ in the third period by King's Courts and popular courts	15.
—“ “ “ in the 4th period, no great modification	20
—“ “ “ in Pathan times, Mogul System ...	26

K

Kalanja maxim —	98, 314, 315
—as an illustration of Pratishedha ...	314
Kalpa Sutras—Angas of the Vedas	66
—(otherwise called Prayoga Sutras), rules of application,	28
Kalpya Nishedhas—by Sree Bhatta Sankara	339
Kalpya Vidhis—“ “	“
Kamya Vidhis—deal with worldly matters	51
—Jaimini's treatment of	51
Kamya Yaga—	193
Kapala—as illustration of wooden sword maxim ...	273
Kapijjala maxim—	280, 427
Karma—Sacrificial ceremony, in relation to primary command	47
Kashiram—quoting maxim “ more words more meaning ” in his commentary on Suddhitatwa ...	354
Keshava—meaning of, in Sruti Sense,	272

	PAGE.
Khandadeva—Bhattadipika, Bhattarahasya and Mimansa Kaustubha by	270, 518
Krama—its importance in Vedic ceremonies and succession of heirs	154
Krama Vidhis—	195
—The three chief kramas, Sruti, Artha and Patha	196
—their bearing on Vyavahara law	197
Kratu Dharma—distinguished from Purushadharma	182
— <i>Na anritum Vadet</i> an illustration of,	189
Kratwartha Vidhis—Nitya and Kamya	53
—treatment of, by Jaimini	52
—very near to positive civil law of Austin	52
Krishnala Nyaya—is an illustration of Badha	215
Kumarila Bhatta—	
—condemns foreign usage	260
—favours literal construction	144
—his definition of Uha	208
— " " of Vakya	137
—his discrimination of Vakya on the one hand and Sruti and Linga on the other	112
—his explanation of Sruti, Linga and Vakya	109
—on Aruni maxim	285
—on conflict of usages	251, 252
—on construction of Aruni maxim	141
—treatment of Laukika Nyayas as Shastras by	353
Kunte (Mr.)—his explanation of the Five principles	105
L	
Laghava axiom—	69
—illustrated by Raghunandana	434
Lakshana—for Linga by Jimutavahana	133, 134
Lakshana Artha— " " 	123
Laugakshi Bhashkara—calls the Mimansa principles of construction Viniyoga Pra- manas	167

INDEX.

xvii

	PAGE.
Laugakshi Bhashkara—his definition of Linga	125
—his explanation of the four principles	106
— of Barhi maxim	131
—on Parnawood maxim	139
Laukika Nyayas—are authoritative	351
—Sir J. Mackintosh on	351
Laukika Nyayanjali—Edited by Colonel Jacob	353
—having the force of Shastra as re- garded by Mimansakas	353
„ Nyaya Ratnakara -by Raghunatha	352
„ „ Sangraha—by Raghunath	353
Law—as defined by Jaimini	30, 33
— „ Austin	33
—Ecclesiastical	493
—five classes of, namely, Vidhi, Nishedha or Pratishe- dha, Arthavada, Namadheya and Mantras	36, 37
—sanction, a necessary element of	34
—sanction exists in Vedic	35
—spiritual and civil, difference between	498
—Vyavahara	494
—meaning of Vyavahara	494
Legal principles—Fundamental	474
Linga—definition of	116, 121
—distinction between Vakya and	157
—Kumarila Bhatta on	127
—Lakshana Artha, another name for	123
—Sree Bhatta Sankara on the dual character of	127
Linga principle—application of	430
—Barhi maxim, an illustration of	129, 160
—construction of, by Digest writers	134
—definition of, by Apadeva and Laugakshi Bhashkara	125
—establishes the eternity of the Vedas	134
—illustrated by Jaimini	132
—Jaimini sutras on	126
—Jaimini differentiates from Artha	126
—Jaimini on	134

	PAGE.
Linga principle—Laugakshi Bhashkara taking a narrow view of	131
—modern idea corresponding to	123
—of two kinds	126
—superiority of, over Vakya	161
—superiority of, as shown by Jimutavahana	166
—two meanings of, general and special Mim-ansa sense	125
—two fold application of	106
Linga samabaya—Pranabhrit and Ajyani to Mantras, by	133
Linga Vakya—illustration of,	136
Litigation—eighteen heads of, as defined and classified by Manu	199
Loka-vedayo-sabdaikyata Adhikarana	263

M

Madhavacharya—his explanation of Gaurava axiom	82, 83
—Minister and Priest of Bukka Raya	517
—Nyayamalavistara by	516
Mahavakyas—definition of	136
Maheswara—a modern Hindu lawyer	204
Mahomedan Law—independent of sovereign power	11
Mahomedan Ruler—introduced no change in Hindu Law except with regard to Revenue	25
Maine, Sir Henry—on ancient law, civil law and Religion	252
Malamasatatwa—Raghunath showing difference between Pratishedha and Paryudasa as illustrated by, in,	433
Manava Sutra—or Manu Smriti appeared in the 2nd stage ..	14
Mangans—a sort of tax	26
Mantra Linga Maxim—Explaining Barhi maxim	129
—Jaimini on	129
Manu—Eighteen classes of litigation as classified by	199
—eight forms of marriage spoken of, by	259
—on fathers' proprietary right in his lifetime	135
—several sorts of usages spoken of, by	259

INDEX.

xix

	PAGE.
Manushyadharma—distinction between kratu-dharma and —obligatory in a certain sense, as compar- ed with Arthavada,	188, 189 187
Marocha—a sort of tax	45
Marriage—eight forms of, as spoken of by Manu	259
Mathut—a sort of tax	26
Maxmuller (Pro.)—considers Sutras more recent... ..	16
—His history of ancient sanskrit literature	16
—on Mimansa system of Interpretation	10
—on sutra period, when began	13, 14
Maxim—Abhikramanadi	292
— „ explained	303
—Amiksha	292
— „ explained... ..	304
—Angapurvabhedi	293
—Angangi	291
—Anritavada	295
—Anusanga	293
— „ explained	307
—Apachheda	318
— „ explained	334
—Arthavada	289
— „ explained, quoting Medhatithi and Ji- mutavahana	298
—Aruni	274
— „ explained	283
—“ Beggar planting his footing ”	357, 369
—“ Blind leading the blind, both will fall into the ditch ”	367
—“ Brahman Bandhu ascetic ”	363
—“ Brahman and the holy traveller ”	357
—“ Cattle and the bull ”	358
—“ Causing to be done is to do ”	355
—Colebrooke on Adhikarana	346
—Collected from Manu having legal character	346
—“ Conchshell and the hour of the day ”	364
—“ Crow's eyeball ”	352
—“ Crow's teeth ”	357

	PAGE.
Maxim—"Crow and the curdled milk"	362
—"Current sense steals away that which is derived from the root "	355
—Current sense usage	271
—"definition alone is proof"	356
—"Dharmatidesha"	294
—"discussing the selection of an auspicious moment after the thing has already been done"	367
—"disposing power only belongs to the owner"	344
—"do not make two sentences or ideas when one is possible"	356
—"do not strike at your own existence"	360
—"Dwayoh pranayanti"	317
—" " effect of	328
—" " explained	324
—" " texts in relation to	325
—"Eating from the brazen vessel"	356
—"Ekavakyata"	292
—"fetching water"	362
—"fifty in a hundred"	355
—"foreign words in their foreign sense"	273
—"four divisions of	316
—"Garhapatya"	287
—"General and the particular."	318
—" " explained	336
—"General resemblance between western legal and Hindu legal	467
—"go not far if you find it at your hand"	360
—"grahaikatwa"	278
—" " application of	431
—"Habis," duality of	279
—"Half and half"	367
—"having legal significance	354
—"If a thing is once done, the requirements of shastra in that respect is fulfilled"	354
—"Incidental"	291
—"Individual virtue"	290

INDEX.

xxi

PAGE.

Maxim—In the same passage a word occurring once cannot be taken in its primary and secondary sense ...	354
—“ Ishtisomiya,” in connection with adoption ...	425
—“ Isau seniya Vishsha ” ...	294
—Jateshti maxim, in connection with adoption, ...	425
—“ Join at one end, break at the other ” ...	361
—“ kaimutika ” ...	295
—“ kalanja ” ...	317
— „ explained by Laugakshi ...	320
—kapijjala ...	280
—krishnala ...	294
—kshameshti ...	294
—“ Lamp on the threshold ” ...	356
—“ Larger fish eating the smaller ” ...	359
—Legislative policy and public policy, on, ...	467
—“ Lion’s look ” ...	352
—Logical ...	472
—“ Loss of limb is not disqualification ” ...	342
—“ Lost horses and the brunt chariot ” ...	358
—Maitra-varuna ...	294
— „ explained, ...	310, 422
—“ Mantra Linga ” ...	289
—“ Maxim of what after ” ...	362
—Mitha asambandha ...	290
— „ explained ...	301
—Mithasambandha ...	290
— „ explained ...	302
—“ More words, more meaning ” ...	354
—Mushtikaranadi ...	291
— <i>Na tau pasau karoti</i> ...	318
—“ nearer the better ” ...	365
—“ nearness of position is not nearness in sense ” ...	365
—Nilakantha explaining ...	345
—nishada-sthapati ...	289
— „ explained ...	297
—Nivita ...	290
—“ Nyaya of the mango-tope ” ...	361

	PAGE.
Maxim—"one riding on a horse cannot be overtaken by one on an ass"	360
—Panka prakshalana	351
—Pashvaikatva	279
—Phalachamasa	276
—Pillar sacrificer	278
—popular meaning	272
—popular, other, described by Colonel Jacob ...	375
—Pradesh-anarabhya	318
—"poverty is not disqualification"	342
—Pranabhrita	277
" in connection with adoption ...	424
—Prastara praharana... ..	288
—Pratishiddha-dravya	317
—"Prevention is better than cure"	363
—"Proclaiming the name of a son before he is born "	367
—public policy and legislative policy on	467
—Rathakara	288
—Ratri Satra	287
regarding the competency of women	342
—regarding the necessity of qualifications	341
—regarding the ownership of property	344
—regarding the law of descent	477
—regarding transfer of property	476
—relating to the conditions to be observed by the performers of act... ..	343
—relating to the crown	471
—relating to the negative rules and conflict of texts	313
—relating to interpretation	479
—relating to law of contract	478
—"resultless being subordinate to that which has a result "	357
Samanasyat	295
—same term having same meaning in modern and ancient texts	273
—same word must not have several meanings ...	276
—Sanyogaprithaka	318
—Saptadasharatni	290

INDEX,

xxiii

	PAGE.
Maxim—Sarvasva-dakshina	275
—scope and meaning of, popular,	370
—sense of a vague word to be gathered from what follows	278
—shastric usage of the words	275
—shorasi cup	317
„ explained	324
Maxim—	484
—“showing the nose by moving the hand round the back part of the head ”	365
—“staff and the cake ”	362
—Some other Mimansa	484
—Swara (chip of wood)	295
—Suktavaka	291
—“Taddiutkarsha ”	293
„ explained	309
—Tadapakarsha	293
„ explained	309
—Tadvyapadesha	296
—“take all of a group on an equal footing ”	365
—“that a word signifies the thing signified ”	364
—“that a thing is not to be taken as imperceptible because it is perceived with great difficulty ”	359
—“that there is no ownership in the king to the soil which constitutes his dominion ”	345
—“three debts ”	296
„ Sankara Bhatta's dealing with	423
—three smriti maxims	319
„ explained	337
—“that which forms the quality of one thing may be the quality of other things ”	366
—“two monsters ”	359
—Udbhida and chitra	296
—“understanding up to the limit of the power of an expression ”	354
—upavita explained	294, 310
—“usage is the best interpreter of things ”	356
—vaishwanara	289

	PAGE.
Maxim—vaishwanara explained	299
—vaishwadeva	277
„ in connection with adoption ...	424
—vakya-bheda	293
—vyaktirachana	277
—“when an object can be attained by following a straight path what is the good of following circuitous course”	361
—“when invited all must be equally attended to” ...	366
—“where both the opposing sides are equally objec- tionable or equally blameless, the go-by should be given to both of them”	364
—“where the reason of a thing is found by percep- tion, it is not proper to seek for any other proof”	363
—“where there are two vidhis, one of a wide and vague scope, and the other definite and limited, the latter should prevail”	366
—wit or sarcasm (expressing)	367
—wooden sword	273
„ explained	281-3
Maxwell—a passage from, corresponding to Vakya principle	137
—Introducing idea corresponding to Linga prin- ciple of the Mimansakas	123, 125
—on interpretation	3
—on the technical meaning of words	131
—Quoting a passage from, showing the importance of object and reason, pradhana chodna ...	171
—Quoting a passage from, in connection with Sheyna text	178
— „ „ in connection with Shyena text showing exceptional construction ...	180
— „ „ in connection with Atidesha	207
— „ „ in connection with Uha Vi- chara	211
— „ „ in connection with sphadi maxim	282
— „ „ in connection with conflict of texts	331

INDEX.

XXV

	PAGE.
Medhatithi—on Namadheya	38
—quoting Kumarila Bhatta	29
—referring to Laukika Nyayas as shastra ...	354
Mimansa—methods, corresponding with Euclid's methods ...	77
Mimansa—Edge, Sir John, his observation on...	8
—how respected by Jurists	317
—importance of the subject of, on Hindu Law ...	9
—Maxmuller (professor) on	9-10
—not by hermeneutic method	31
—Shabdi-bhavana and Arthi-bhavana in...	56
—Thibaut (Dr.), his observations on	10
—rules of interpretation, five classes of ...	68
—rules and principles in Dharma sutras of Gautama and Apastamba	66
—rules and principles, germs in the Vedas ...	65
—rules regarding Smritis and usages	223
Mimansa Jurisprudence—and modern Jurisprudence, their similarity	32
Mimansa philosophy—conservative and rational school of ...	507
Mimansa principles—application of, by writers other than the founders of the two Codes	417
—how applied to the texts of the digests	390
—rules laid down by the case of Collector of Madura v Mootoo Ramalinga substantially correspond to ...	442
Mimansa rules—application of, examination as to the ...	449
—not dead in Mahomedan period	28
—of construction tallying with English principles ...	6
—of construction, their correspondence with modern legal ideas	230
—of construction, substantially agree with the modern English principles of construction ...	482
—seven rules of construction	227
Mimansa writers—do not depart from literal principles ...	143
—recognise local custom in case of worldly matters but not in case of religious matters	258
—reduce the rules of interpretation to a scientific shape	157
Mimansa system of interpretation—Colebrooke on ...	9

	PAGE.
Mitakshara—displaced by Jimutavahana in Bengal ...	22
—impressed with Buddhistic influence ...	21
—internal evidence showing Buddhistic influence...	21
—quoting Jaimini sutras	29
Mitha asambandha Nyaya	153
Mitra, T. N. (Dr.) holds that Dharma Sutras are binding treatises	17
Mlechha language—	225
—of the Bauddhas '	226
—of the Greek and Scythian	225
Mlechha prasiddha padarthadhikarana—	227
—Foreign words in foreign sense ...	260
—Sutras relating to ...	229
Mlechha usage—adopted when referred to in the Shastras ...	262
—condemned by Kumarila	260
—influence of, very little in Savara's time ...	260
Mother—means natural parent and not step-mother as put by Jimutavahana	85, 86

N

<i>Na anritam Vadeta</i> —Manu on,	329, 323
<i>Na hinsyeta</i> —	323, 329
Naimittika Vidhis—deal with worldly matters	51
—Jaimini's treatment of	51
—or Kamya Vidhis	403
Namadheyas—degree of subordination of	91
—difference between Arthavada and	38
—discussed	41
—Medhatithi on	38
—Non-obligatory texts are	177
—other writers on	38
—Shyena text, as an illustration of	177
—what are	38
Nanda Pandit—his interpretation of law of adoption	417
—referring to Pranabhrit maxim,... ..	133, 278
Narayanatirthamuni—	520

INDEX.

xxvii

	PAGE.
<i>Nema</i> —a foreign word	261
Nilakantha—his interpretation of law of adoption ...	417
—his view regarding sovereign's right over the soil in his dominion	420
—on Sarvadakshina maxim	419
—relying on Nishadasthapati on the right of a Sudra to perform <i>putreshthi</i>	297
—three maxims invoked by, to explain the subject of adoption	420
Nishedhavidhis—	36
—as appearing from the kalanja maxim	322
—generally relate to Purushadharmas	323
— <i>Na anritam Vadeta, Na hinsyeta</i> are illustrations of... ..	323, 324
—reverse of Vidhi	40
Nitya Vidhis—	403
—discussed by Jimutavahana	403
Niyama—a directory rule	42, 181
—distinction between Vidhi and, in their application to transcendental object	180
—illustration of	43
—Kumarila on	42
—quasi-obligatory text	182
—Vedic and Laukika	210
—Vyavaharic, illustrated	502
Niyama Vidhis—Apya Dikshita's treatment of	210
Nrisinhaprasad—a digest of Hindu law in Mahomedan period	24
Nyayamalavistara—explaining Gaurava axiom... ..	83
Nyayas—Analysis of, by Pro. Maxmuller	267
—are illustrative cases of interpretation	7
—Bhumiradhika	366
—Four classes of,	270
—Mimansa, Mr. Gopalachariar on	64
— „ , Superior to those of Grammar and Logic	64
—resemble head notes	267
—Shakunigrahakagatika	367
—Shuskeshti	367

O

	PAGE
Option—when to be exercised	97, 98
Ondumvari text—as illustration of Vidhivannigadadhikarana	173
—as illustration of conflict between a Smṛiti text and a Vedic text	234
—is a maxim for distinguishing between an obligatory from non-obligatory text	174

P

Padārtha prabalya maxim—interpretation of, by Kumarila	240
— „ by Savara	226
—Savara's view of the Sūtras regarding	240, 1
—Sūtras relating to	228
Pankaja—popular meaning of	272
Panka prakshalana Nyaya—its origin in Mahabharata ...	351
Parashkara—Grihya and Dharma Sūtras of	14
Parisankhya—as enunciated by Raghunandana	503
—a monitory precept, Kumarila on	42
—as quasi-obligatory	182
—illustration of	43
Parnawood maxim—Vakya principle availed of in explain- ing	140
Partha Sarathi Misra—	517
Partition-Free—Manu and Sanhitas speak of	21
Paryudasa—	93, 97
—as used by Jimutavahana	94
—explained by Jimutavahana	330
—explained by Laugakshi Bhashkara... ..	329
—illustrated by Prajapati Vow	319
—or right in <i>personam</i>	314
—other examples of	333
—Raghunandana's text regarding Parvana Śradh as explained by	202
—taken notice of by Dayabhaga and Mitakshara in explaining certain texts regarding exclu- sion from inheritance of certain causes of of disability	332

INDEX.

xxix

	PAGE.
<i>Pashukamo Yajeta</i> —an Arthavada text	179
Pathakrama--	196
Pathan Feudal system—introduced in India	23
<i>Pika</i> —a foreign word,	261
Prabhakara—	516
Prabritti Krama—	196
Prakarana—defined by Jaimini	147
—discrimination between Vakya and, by Bhatta	114
—upalakshana, another name for	123
—what is	146
Prakarana principle—	70, 100
—as illustrated by Raghunandan being different from Vakya	152
—distinguished from Guna Sruti	153
—explained, general view of	102
—is a principle of upalakshana	151
—Laugakshi's explanation with illustrations	147
—may be illustrated from modern law	149
—must not be raised to Vidhi	150
Prakriti (model)—as Darshapaurnamashi	200, 202
Pramanas—Mimansa, seven	369
seven kinds of	167-168
Pranabhrut—name of a mantra in Taittiriya Sanhita became a maxim	132, 133
Praptabadha—definition of	215
—illustrations of	216, 336
Prasanga—as treated by modern writers	221
Pratipattikarma—how dealt with by Jaimini	53
—non-essential act, explained by Jaimini	186, 187
Pratishedha—Pratyakshya and Kalpya	55
—or rights in rem	314
—two kinds of	314
Prayoga or usage law	223
—accessory to utpattividhis	48
—explained with illustration	49
—or rules of procedure	45
Prayoga Vidhis—are local or tribal	254

	PAGE.
Prayoga vidhis—included in Gunavidhis	48
Precedents and rulings—how affected interpretation	2
Principles—Apadeva's explanations of four	107
—four,	100
—fundamental legal	474
—general, of law, gradually evolved	386
—general view of four	100
—Jimutavahana's naming of the four,	123
—Kunte's explanation of four	104
—Laugakshis' explanation of four	106
—modern names of the four	122
—of succession and inheritance how developed	387
—position of four, in relation to each other	103
—relative force of, discussed in detail	155
—Savara Swami's views of the four	114
Priyangu—meaning of	275
Property—conception of, according to Vijnaneswara and Jimutavahana	393
—conception of holding, before the Digest writers, by the Hindu society	384
—immoveable, disposal of, by will or gift	411
—maxims regarding transfer of,	476
—modern and ancient idea of holding	384, 385
—power of father over self acquired and ances- tral, view of Jimutavahana regarding nature of father's ownership	405
Puranas—Colebrooke on	247
—their position in the positive law	235
Purodasha	193
Purushartha vidhis—Nitya and kamya	53
—not like positive civil law of the modern times	52
—as treated by Jaimini	52
Purushadharma—distinction between kratudharma and	182
—illustrations of,	183
Putreshti Yaga—	179, 304
Pundit—contains popular maxims, by Satyavrata Sama- srami,	352

R

	PAGE.
Raghavananda	519
Raghunandana—applying Vākya principle in construing a passage of Manu	431
—difference between Pratishedha and Paryu- dasa as illustrated by, in his Malamasa- tātwa	433
—discussing Atidesha Principle	434
—his illustration of Apurva sanction with reference to Janmashtami ceremony	432
—his vindication of animal sacrifice in Dur- gapuja	432
—illustrating Laghava axiom	434
—quotes the maxim “more words, more meaning” in his Udvahatātwa	354
Raghunath—author of Laukika Nyaya Ratnakara	352
“ “ “ Sangraha,	353
Rajsuya Yajna	214
Ramchandra	521
Rameswar Suri	520, 226
“ his view of usage	243
Rangaraja	521
Real action	199
Replevin	199
Resume, a brief.	523
Rigveda—a source of Smṛiti	231
Rules—of evidence and interpretation stand side by side	2
Rulings and precedents—how affected interpretation	2

S

Sadachara—	244
Sadyaska Yāga—	214
Sakala—on the invalidity of adoption of daughter's, sister's and mother's sister's son	460

	PAGE.
Sakti or Samartha—of a word	276
Samakhya Principle—another case of Prakarana ...	153, 155
Samanjasya axiom—	69
Samanya sruti kalpanadhikarana—	227
—Sutras relating to	229
—otherwise called Holakadhikaran	252, 253
Samhita—or codification of the third stage of Hindu law ...	16
Samuhahitavadi—or the public assembly, its scope in the Bauddha period	23
Sanction—an element of modern law	34
—Apurva, of a vidhi, gathered from all the terms composing it	83
—comes by implication in vedic law	39
—degree of, in modern and vedic law	39
—dharma or adharma	36
—Hindu law has	493
—is Apurva in vedic law	35
—nature of, ancient and modern	494
Sankara Bhatta—three-debts maxim, as dealt with by ...	423
Sankhyayana—Grihya and Dharma Sutras of	14
Sarthakya axiom—Explained and discussed	78
—is appealed to in the discussion of Arthavada by Jaimini	79
Shastra prasiddha Padartha pramanyadhikarana— ...	249
—commentators referring to verbal usages	249
—kumarila's discussion on	250
—Rule 5,	227
—Sutra regarding, by an opponent	250
Shishtachara—	245
Shorasi maxim—	97, 98
Shyenena Yajeta—different explanation of, by Savara, Kumarila and others	178
—it is an Arthavada according to Savara	178-179
Sidgwick—American jurist	2
Siromani, Dr. J.—Rule by	335
Smritis—necessity of Mimansa rules in interpreting ...	428
Smriti law—	223

INDEX.

xxxiii

	PAGE,
Smriti law—cases of conflict in, must be reconciled ...	96
—evolution of, from vedic law ...	54
—presumption of, as part of vedic law ...	50
—seven principles of construction of ...	227
—Substantive, the three great presumptions under- lying ...	435
—three presumptions regarding, relied on by Digest writers ...	437
—treatment of by Jaimini ...	224
—vedic origin of, in Rigveda ...	231
Smritipramanya dhikarana—Sutras relating to ...	227
Smriti texts—principally underlying ...	434
Smriti vidhis—	
—are indirect revealed law ...	31
—swargakamo yajeta to be read into ...	48
Sarthakya axiom—Made use of by digest writers, such as, Jimutavahana and others ...	80
Sarvadakshina maxim—Nilakantha on ...	419
Sarvasva— ...	275
Satra Yaga— ...	193, 214
Saunaka—and Sakala's text regarding the adoptibility of	
—certain sons ...	428
—his text regarding adoption of daughter's and sisters' sons by Sudras ...	422
—his text regarding adoption of an only son, cons- truction of, by Mimansa Rules ...	452
—on the invalidity of adoption of daughter's, sister's and mother's sisters' son ...	460
Sauryya Yaga—a vikriti of the Agneya ...	208
Savara Swami—his division of Uha ...	208
—his explanation of the three-debts maxim ...	435
—his treatment of Laukika Nyayas as Shastra ...	353
—on conflict of texts ...	219
—on construction of Aruni maxim... ...	141
—on interpretation of Jaimini sutras ...	143
—on Vakyas ...	136
—referring to other principles of construction, as is observed by Kumarila ...	144

	PAGE.
Savara Swami—refers to the Vedas as illustrating the three-	
debts maxim	436
Shabdibhavana—	56
Shadhupada, prayukta Adhikarana	263
Shakamedha—	325
Shastra—performance of matters sanctioned by	249
Somanath—	519
Son—adoption of an only, construction of the texts by the	
Pivy Council regarding, not in accordance with the	
Mimansa rules	449
—adoption of mother's sister's, daughter's and sister's, in-	
valid	459
—prohibition of the adoption of an only	458
—right of, born after partition, texts regarding it	95
—Saunaka and Sakala on the invalidity of the adoption	
of mother's sisters', daughter's and sisters'	460
—texts of Vashishtha and Saunaka regarding the adop-	
tion of an only son, construction of, by the Mi-	
mansa rules	452
Sorasi vessel—an illustration of Pratishedha	314, 315
Sovereign—how far has proprietary right to the soil included	
in his dominion	419
—Nilakantha's view regarding sovereign's right	
over soil	420
<i>Spha</i> —Sword	274
Sreekrishna Tarkalankara—referring to Laukika Nyayas as	
Shastra	354
Sruti—Colonel Jacob on	121
—Guna and Mukhya	89
—instances of	121
—Jaimini on	121
—Serves to explain other passages	121
—Udichya Bhattacharya on	117
—Vaehashpati Misra on	117
—Vakya, illustration of	116, 136
Sruti and Smriti—difference between	12
Sruti Krama	196
Sruti parvalyadhikarana—Sutras relating to	227, 228

INDEX.

XXXV

	PAGE.
Sruti principle—	70
—distinguished from Linga, Vakya and Prakara- rana	159
—illustration from Jimutavahana showing superiority of	164
—importance of	71
—not to be departed from in construing sutras	143
—preference of	120
—superiority of	119, 161
Sruti Vidhis—are direct revealed law	31
Statute—Words or sentence in, must not be superfluous ...	7
Statute law—	223
—dealt with, in books on interpretation ...	2
Sthana principle—defined and explained	153
—is identical with krama	153, 154
Sthana and Samakhya principles—	72
Subodhini Vritti—of Rameswar Suri	226, 243
Succession—principles of, how developed	387
—views of Vijnaneswara and Jimutavahana regar- ding	388
Sudras—Badarayan on	194
—competency of, to perform vedic ceremonies except Agneya sacrifices	50
—Jaimini on	194, 195
—usage played important parts regarding right of ...	306
Suktavaka—	288
Sunashiri—	325, 326
Sutras—Apastamba, Baudhayana	61
—commentators' discussion on Mimansa, more theo- logical than Judicial	57
—distinguished Hindu Lawyers, such as, Vijnaneswara and others, make judicial application of the ...	59
—Dr. Thibaut on,	57, 58
—Jaimini's not silent on civil law,	435
—Jimutavahana on the Mimansa	60
—Kulluka Bhatta on the	60
—Kumarila Bhatta on the	144

	PAGE.
Sutras—Medhatithi on the Mimansa	60
—Nilakantha on the	60
—primarily investigate spiritual duty as also civil duty	32
—Raghunandana on the Mimansa	61
—Savara swami on the	143
—style of the	509
—Their scope	29-30
—written in the second period of Hindu Law	13
Swadhyaya—or written Vedas	14
Swargakamo Yajeta—The keynote of the whole Vedic law	56

T

<i>Tamarasa</i> —lily flower (a foreign word)	237
Tantraratanakara—author of,	203
Tantrata—	220
—illustration of	221
—treatment of, by modern writers	221
Tantravartika—passage from	256, 257
—passages from, showing influence of foreign language and usage	261
Texts—Construction of, by the Judicial Committee is in accordance with Mimansa rules	449
—construction, of Vashishtha and Saunaka, as to the adoption of an only son	452
—declaring individual right of property	408
—Five classes of,	170
—obligatory, non-obligatory and quasi-obligatory, defined	170
—of Saunaka regarding the adoption of daughters' and sisters' son by Sudras	422
—regarding alienation of immoveable property	407
—utility of classification of, into Vidhi and Arthavada	439
Thibaut, Dr.—his translation of Laugakshis' passage on Kalanja clause	320
—his translation of parna wood maxim as explained by Laugakshi Bhashkara	139

INDEX.

xxxvii

	PAGE.
Thibaut, Dr.—his translation of Vakya as defined by Lau-	
gakshi	137
—on Mimansa system of interpretation ...	10
Todarmal—a minister of Akbar, his Vyavahara saukhyas ...	25
Treatise—three fixed rules of guidance for writing ...	374
Trespass on the case—	199
Trover—	199

U

Udichya Bhattacharya—	520
—Adhikaran Kaumudi by ...	116
—on the meaning of Keshava ...	272
—on Ratrisatra maxim	287
—sruti as defined by	117
Uha—application of, to marriage and adoption ...	211
—as used by Jaimini	207-208
—definition of	90, 198, 200
—division of, into three classes, by Savara ...	208
—extended application of, in modern writings ...	208
—in relation to Arthavada and Niyama	209
—Kumarila's objection to division	208
—meaning of, according to the author of Mahabhashya.	208
—principle of, its scope	207
—use of, by Smriti writers in an extended sense ...	212
Uha-vichara—	211
—co-extensive with equity and good sense ...	213
—correspondence with modern construction	
most agreeable to justice and reason ...	211
—quotation from Maxwell in connection with...	211
Upalakshana—another name for Prakarana	123, 151
Upasthana Mantra—or prayer to fire	65, 66
Usages—became important source of law in the second	
period	15
—Colebrooke giving the views of Kumarila on ...	256
—conflict of, in the same and different localities ...	251
—conflict of, as shown by Jaimini	251
— " as shown by Kumarila	251-252
—Kumarila's view of	242

	PAGE.
Usages—presence of Sanskrit words in interpreting popular..	264
—Rameswara Suri's view of	243
—seven principles of construction of	227
—test of validity of	245
—to be understood in their general senses	264
—treatment of, by Jaimini	224
—validity of	244
—valid, if recommended	246
— „ if not condemned by the wise	247
Utkarsha—included in Vakya Principle	141
Utpatti Vidhis—are general	254
—definition of,	45. 90. 190
—Swargakamo Yajeta is the common element in all	46

V

Vachashpati Misra—Sruti defined by	117
Vaiswadeva—	325, 326
Vakya—apart from Sruti-Vakya and Linga-Vakya, by Savara and Kumarila	116
—discrimination between Prakarana and, by Bhatta...	113
—illustration of	136
—Laugakshi's definition of	137
—Linga, Sruti.	116
—Sloka vartika on	113
—superiority of, over Prakarana... ..	163
—Tantra vartika upon	113
—two classes of, as spoken of by Mimansakas	136
—what is?... ..	115
Vakya principle—	70, 99
—Adhyahara, Anusanga and others are included in.	141
—Anvaya, another name for	146
—Aruni maxim, another illustration of	141
—Bhatta on... ..	137
—construction of, by digest writers	134
—defined and illustrated	135

INDEX.

xxxix

	PAGE.
Vakya principle—detailed discussion of, with illustration ...	137
—distinction between Linga and Vakya ...	157
—distinction between Sruti and Vakya ...	159
—distinct from Vakya... ..	135
—illustrations from Slokavartika of ...	145
—Jaimini on	135
—Parnawood maxim is an illustration of ...	139
—Raghunandana applying, in construing a passage of Manu	431
—two fold application of	106
Vakyabheda—conception of	87
—double-meaning according to Mimansakas ...	86
—illustrations of	86-87
—Jaimini referring to	88
—popular maxim concerning	87
Varuna prashasha—	325
Vashishtha—grihya and Dharma Sutras of	4
—his text regarding the adoption of an only son construction of, by Mimansa rules ...	452
Vedantadesika—	519
Vedas—are the sources of the Mimansa principles ...	65
—division of, contents of, into Matter and Manner, their subdivisions	119
—division into Vidhi, Arthavada etc.	
— „ into Sruti, Linga, Vakya and Prakarana ...	118
—know no local Vidhi... ..	255
Vedic commands—not contradictory	96
Vedic law—key note of, Swargakamo Yajeta	56
Verbal construction—see construction.	
Vidhis—all imperative texts are not	429
—classification of positive, into Nitya and Kamya —	403
—classification of, into Vidhi proper, Niyama and Parisankhya	498
—classification of spiritual, into Vidhi proper, Niyama and Parisankhya	501
—dealing with worldly objects	52
—definition of, adopted by Mimansakas	39
—Distinction between Niyama and, in their relation to transcendental objects	180

	PAGE.
Vidhis—distinction between Arthavada and,	37, 40
—division of, into Pratishedhas and Paryudasas	54
—division of, into Pratyakshas and Kalpya	55
—Further subdivision into Purushartha and krat-wartha	52
—general (are),	256
—Kamya and Nitya	430
—Kumarila Bhatta's differentiation of	420
—must be short and simple	84
—Naimittika or Kamya	51
—Nishedha	40
—object of Vedic, is heavenly bliss	50, 171
—scope of Vedic	50
—sometimes become Niyama	182
—subdivision of, by Jaimini	41
—Utpatti	45
Vidhi Vaishamya—inconsistency of legal rules (or)	327
Vidhibannigadadhikarana—as explained by Jaimini	173
—illustrated by the oudumvari text	173
—the topic of Arthavada looking like Vidhis	172
Vijnaneswara—an instance of divergence of opinion between Jimutavahana and	396
—conception of property according to,	393
—different interpretation of Gautama Sutra by	391
—different views of, regarding succession and inheritance	388
—Hindu or a Buddhist	22
—his work, suffered at the hands of the English Judges	414
—quoting Medhatithi	29
—principle of spiritual benefit and that of Family Corporation advocated by,	389
—resorting to Linga, Vakya and Prakarana principles of construction	431
—restricting the disposing power of father in respect of ancestral property	415

INDEX.

xli

	PAGE.
Vikalpa—a matter of option	55, 69
—faulty construction	8
Vikriti—	200
Viniyoga Vidhis—accessories to Utpatti Vidhis	48
—applicatory rules	45
—explained with illustrations	49
—included in Guna Vidhis	48, 90
Visarjana homa	237
Vishwakosha—contains popular maxims	352
Vox populi—in connection with usage law	240
Vyakti—	265
Vyasa—text of, on the subject of gift to non-existent beings, subject to an exception in favour of testamentary disposition,	412
Vyavahara—defined,	497
Vyayahara law—meaning of	496
Vyavahara Saukhya—by Todar Mal	25

W

Webber—describes Yajnavalkya as a Buddhist teacher	22
West, Pro —considers Sutras to be more recent,	16
Wilberforce—his interpretation of statutes	2
Wills—law of	411
Women—Badarayana on	104
—competency of, to perform Vedic Vidhis	50, 192
—Jaimini on	194, 195
—Later Brahminical writers on	305
—usage played important part regarding the right of,	305

Y

Yajnavalkya—commentary of Viswarupa	21
— „ of Vijnaneswara	21
—Mahabharata on,	22
—text of, Jimutavahana and Srikara Misra on,	327
—text of, explained with the help of Dwayo pranayanti maxim,	328

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